

## **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

### **Article I. Purpose**

#### **16.8.1 General.**

The purpose of this chapter is to outline development design and performance standards to ensure public health, safety and welfare.

### **Article II. Monuments**

#### **16.8.2.1 Stone Monuments.**

A. Stone monuments must be set at all street intersections and points of curvature, but not more than seven hundred fifty (750) feet apart along street lines without curves or intersections.

B. Stone monuments must be set at all corners and angle points of the development boundaries where the interior angle of the boundaries is less than one hundred thirty-five (135) degrees or greater than two hundred twenty-five (225) degrees.

C. Stone monuments must be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. Drilled holes, one-half inch deep are to serve to locate the point or points described above.

#### **16.8.2.2 Other Monumentation.**

All other development boundary corners and angle points, as well as all lot boundary corners and angle points are to be marked by suitable monumentation constructed of reasonably permanent material and solidly embedded in the ground. All such monumentation must be capable of being detected by commonly used magnetic or electronic equipment and clearly show the registration number of the registered land surveyor responsible for the survey.

#### **16.8.2.3 Impractical Placement.**

Where the placement of a required monument at its proper location is impractical, it is permissible to set a reference monument close to that point on an adjacent property line.

### **Article III. Street Signage**

#### **16.8.3.1 Names.**

Streets which join or are in alignment with streets of abutting or neighboring properties must bear the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and are subject to the approval of the Planning Board.

#### **16.8.3.2 Signs Provided.**

Street name signs are to be furnished and installed by the developer; the type, size and location to be approved by the Commissioner of Public Works.

## **Article IV. Streets and Pedestrian Ways/Sidewalks Site Design Standards**

### **16.8.4.1 Purpose.**

The design of streets must provide for proper continuation of streets from adjacent development and for proper projection into adjacent undeveloped and open land. These design standards must be met by all streets within Kittery and control street shoulders, curbs, pedestrian ways/sidewalks, drainage systems, culverts and other appurtenances. (Ordained 9/24/12; effective 10/25/12)

### **16.8.4.2 Layout.**

- A. Streets are to be designed to discourage through traffic on minor streets within a residential subdivision.
- B. Reserve strips controlling access to streets are prohibited except where control is definitely placed with the municipality.
- C. Any development expected to generate average daily traffic of two hundred one (201) or more trips per day is to have at least two street connections with existing public street(s).
- D. Where a development borders an existing narrow street (below standards set herein) or when the comprehensive plan indicates plans for realignment or widening of a street that would require use of some of the land in a development, the plans must indicate reserved areas for widening or realigning such streets, marked on the plan "Reserved for Street Widening/Realignment Purposes." Land reserved for such purposes may not be included in computing lot area or setback requirements of this Code.
- E. Where a development abuts or contains an existing or proposed arterial street, the Board may require marginal access streets (i.e., street parallel to arterial street providing access to adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or proposed arterial street) with screen planting contained in a non-access reservation along the rear property line, or such other treatments as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- F. Entrances onto existing or proposed arterial highways/secondary arterials may not exceed a frequency of one per one thousand (1,000) feet of street frontage.

### **16.8.4.3 Street Classification.**

Streets are classified by purpose, function and use frequency.

- A. Arterial highways are major traffic ways that provide connections with other thoroughfare or interstate roads and have a high potential for the location of significant community activity centers as well as retail, commercial and industrial facilities. The average daily traffic count (ADT) would be nine thousand one (9,001) or more trip ends.
- B. Secondary arterials carry relatively high volumes of traffic to or from arterial highways, adjacent communities, and through local residential areas, activity centers and minor commercial establishments. The ADT would be three thousand one (3,001) to nine thousand (9,000) trip ends.

## RECODIFICATION - ORDAINMENT – 07/26/2010

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C. Commercial, light industrial and mixed use zone developments are located in areas where street design is oriented to accommodate community wide and regional interests with limited residential uses. The intended uses, ADT, peak hour traffic, and any other additional information that may be required by the Board will determine their classification, which may not be lower than a secondary collector.

D. Primary collectors may be residential, or business, or both, and serve both as collectors to lesser residential streets and as connections to or between arterials. The ADT would be from eight hundred one (801) to three thousand (3,000) trip ends and in the interests of traffic and public safety must be owned and maintained by the Town.

E. Secondary collectors may be residential or business, or both, and connect to or between streets of a higher classification, and/or may collect traffic from minor streets or private ways. The ADT would be two hundred one (201) to eight hundred (800) trip ends.

F. Minor streets are predominantly single-family residential short or dead end streets which may have branching minor streets, private lanes, or private ways and conduct traffic to streets of higher classification. This is the lowest level of public street in the hierarchy and must serve at least four dwelling units. The ADT would be thirty-five (35) to two hundred (200) trip ends.

G. Private streets function exclusively as residential streets serving high density housing developments including clustered housing, apartments, elderly housing, and mobile home parks and may not be dedicated for public acceptance. Maintenance and improvements must be controlled by proprietorship, corporation, association, or deed covenants. The ADT would be seventy-two (72) to eight hundred (800) trip ends. Design and construction is to be in accordance with the applicable standards and specifications for minor streets or secondary collectors.

H. Private lanes are short low traffic volume residential dead end streets which may serve part of a high density development or other residential uses conforming to the applicable standard residential space requirements enumerated in this Code. Private ways may not be dedicated for public acceptance and improvements must be controlled by proprietorship, corporation, association, or deed covenants. The ADT would be thirty-five (35) to seventy-one (71) trip ends.

I. Private ways are dead end, very low volume residential streets that connect to streets of a higher classification and function similar to an individual driveway by providing a low standard two-way traffic flow. Private ways may not be used in high density residential developments or subdivisions of four or more lots. Private ways cannot be dedicated for public acceptance and all maintenance and improvements must be controlled by proprietorship, corporation, association or deed covenants. The ADT would be twelve (12) to thirty-five (35) trip ends.

J. Average daily traffic (ADT) is computed using the latest Institute for Transportation Engineers (ITE) codes and Figures.

### **16.8.4.4 Street Design Standards.**

Design standards for classified streets and sidewalks are those contained in Figure 1 for Chapter 16.8, set out at the end of this chapter.

**16.8.4.5 Access Control and Traffic Impacts.**

Provision must be made for vehicular access to a development and circulation upon the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within the development, to avoid traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. Access and circulation must also conform to the standards and criteria listed below.

- A. Vehicular access to the development must be arranged to avoid traffic use of local residential streets.
- B. Where a lot has frontage on two or more streets, the access to the lot must be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
- C. The street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development must have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use. No development may increase the volume: capacity ratio of any street above 0.8 nor reduce any intersection or link level of service to “D” or below.
- D. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision must be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.
- E. Access ways must be of a design and have sufficient capacity to avoid hazardous queuing of entering vehicles on any street.
- F. Where topographic and other conditions allow, provision must be made for circulation driveway connections to adjoining lots of similar existing or potential use:
  - 1. When such driveway connection will facilitate fire protection services as approved by the Fire Chief; or
  - 2. When such driveway will enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a street.

**16.8.4.6 Centerline.**

The centerline of a roadway must be the centerline of the right-of-way.

**16.8.4.7 Dead End Streets.**

- A. Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand of trees must be maintained within the center of the cul-de-sac.
- B. The Board may require the reservation of a twenty (20) foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street.
- C. The Board may also require the reservation of a fifty (50) foot easement in line with the street to provide for continuation of the road where future development is possible.

**16.8.4.8 Grades, Intersections and Sight Distances.**

A. Grades of all streets are to conform, where feasible, to the terrain, so that cut and fill are minimized while maintaining the grade standards of this Code.

B. All changes in grade are to be corrected by vertical curves in order to provide the following minimum stopping distance where based on street design speed calculated with a height of eye at 3.5 feet and the height of object at 0.5 feet:

Design speed (mph)	20	25	30	35
Stopping sight distance (ft.)	125	150	200	250

C. Intersections of streets are to be at angles as close to ninety (90) degrees as possible and in no case may two streets intersect at an angle smaller than sixty (60) degrees. To this end, where one street approaches another between sixty (60) and ninety (90) degrees the former street should be curved approaching the intersection.

D. Where new street intersections or curb cuts are proposed, sight distances, as measured along the street onto which traffic would be turning, is based on the posted speed limit and must conform to the Table following:

Posted speed limit (mph)	25	30	35	40	45	50	55
Sight distance (ft.)	250	300	350	400	450	500	550

1. Sight distance is the length of roadway visible to a driver exiting an intersection or curb cut. Such sign distance is measured from a point that is located at the centerline of the exit lane and fifteen (15) feet back from the edge of the travel way to the centerline of the oncoming lane(s) with the height of eye at 3.5 feet and the height of an object 4.25 feet above the pavement.

2. When the actual traveling speed of normal traffic on a road is substantially higher than the posted speed limit, the sight distance is computed by multiplying the 85th percentile of such speed as measured by a qualified traffic engineer by a factor of ten. The result, in feet, is the minimum sight distance required.

3. Where necessary, corner lots must be cleared of all growth or other sight obstructions, including ground excavations, to achieve the required visibility.

E. Cross (four cornered) intersections are to be avoided insofar as possible.

**16.8.4.9 Side Slopes.**

Side slopes of all streets must be graded, covered with appropriate compost or, loamed, fertilized and seeded in accordance with the specifications of the erosion and sedimentation plan.

**16.8.4.10 Right-of-Way (ROW) Grading.**

Streets are to be rough-graded full width.

**16.8.4.11 Street Construction Standards.**

A. Preparation. All organic materials, rocks and boulders must be removed to a depth of two feet below the subgrade of the roadway. On soils which have been identified by the Commissioner of Public Works as not suitable for roadways, the subsoil must be removed from such locations to a depth of two feet below subgrade and replaced with material meeting the specifications for gravel aggregate sub-base or a substitute acceptable to the Commissioner of Public Works.

B. The aggregate sub-base course must be sand or gravel of hard, durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three- inch square mesh sieve must meet the following grading requirements and contain no particles of rock exceeding four inches in diameter (MDOT Specification 703.06 (b) Type D):

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/4"	25-70%
#40	0—30%
#200	0—7%

C. The aggregate base course must be sand or gravel of hard, durable particles, free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three- inch square mesh sieve must meet the following requirements (MDOT Specification 703.06(a) Type A):

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/2"	45—70%
1/4"	30—55%
#40	0—20%
#200	0—5%

**16.8.4.12 Street Plantings.**

When appropriate, the Board may require a street design that incorporates a green space/planting area within the street's ROW. Said plantings must be installed at the developer's expense according to a plan drawn up by a landscape architect.

**16.8.4.13 Sidewalks.**

A. Where required, sidewalks must be installed to meet minimum requirements as specified in Table 1 of Chapter 16.8.

B. The position of any sidewalk within the street ROW in relation to the pavement surface is to be determined by the Planning Board.

**16.8.4.14 Road and Driveway Standards in the Shoreland and Resource Protection Overlay Zones.**

A. Road construction and parking facilities are allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.

B. The following standards apply to the construction of roads and/or driveways and drainage systems, culverts and other related features in the Shoreland and Resource Protection Overlay Zones:

1. Roads and driveways must be set back:

a. at least one hundred (100') feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland; and

b. seventy-five (75') feet from the normal high-water line of any water bodies or the upland edge of a wetland on Badgers Island, unless no reasonable alternative exists as determined by the Planning Board.

c. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50') feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Said erosion and sediment control measures for roads and driveways must meet "Maine Erosion & Sediment Control Best Management Practices", March 2003.

2. On slopes of greater than twenty (20) percent the road and/or driveway setback must be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

3. Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body.

4. New roads and driveways are prohibited in a Resource Protection Overlay Zone except the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the zone. A road or driveway also may be approved by the Planning Board in a Resource Protection Overlay Zone, upon a finding no reasonable alternative route or location is available outside the zone. When a road or driveway is permitted in a Resource Protection Overlay Zone the road and/or driveway must be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

5. The maximum slope for road and driveway banks is two horizontal to one vertical (2:1). Bank slopes must be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section.

6. The maximum slope for road and driveway grades is ten (10) percent except for segments of less than two hundred (200) feet.

7. To prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways must be designed, constructed and maintained to empty onto an un-scarified buffer strip at least fifty feet plus two times the average slope  $[50' + (2 \times S \text{ average})]$ , in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage that is directed to an un-scarified buffer strip must be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the

## RECODIFICATION - ORDAINMENT – 07/26/2010

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buffer strip.

8. Ditch relief (cross drainage) culverts, drainage dips and points of stormwater discharge must be designed and constructed so that drainage is diverted onto un-scarified buffer strips before the flow gains sufficient volume or head. The following criteria should be implemented where possible to deter and prevent excessive erosion:

a. Ditch relief culverts, drainage dips and associated water turnouts must be spaced along the road or driveway at intervals no greater than indicated in the following Table:

Grade (Percent)	Spacing (Feet)
0 – 2	250 max
3 – 5	135 – 200 max
6 – 10	80 – 100 max
11 -14 max	60 – 80 max

b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.

c. On sections having slopes greater than ten (10) percent, ditch relief culverts must be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.

d. Ditch relief culverts must be sufficiently sized and properly installed to allow for effective functioning, and their inlet and outlet ends appropriately stabilized with acceptable materials and construction techniques.

9. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways must be maintained by the owner(s) on a regular basis to assure effective functioning

10. In a Shoreland, or Resource Protection Overlay Zone, when replacing an existing culvert, the watercourse must be protected so the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.

11. A permit is not required for the replacement of an existing road culvert provided the replacement culvert is:

- a. not more than one standard culvert size larger in diameter than the culvert being replaced,
- b. not more than twenty-five (25) percent longer than the culvert being replaced, and
- c. not longer than seventy-five (75) feet.



# RECODIFICATION - ORDAINMENT – 07/26/2010

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Table 1 - Chapter 16.8, Article IV									
DESIGN AND CONSTRUCTION STANDARDS FOR STREETS and PEDESTRIAN WAYS									
Page ONE	PUBLIC STREETS						PRIVATE STREETS		
Design and Construction Standards	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Average Daily Trips (ADT)	9,001 or more	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
<b>Street Width Design:</b>	Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.		Commercial, light industrial and mixed use development(s) streets shall be constructed to no less than secondary collector standards and may be subject to higher standards depending upon the traffic generation and use(s) intended.				Same standards as public streets (Primary collectors, secondary collectors, and minor streets) based on average daily trips count (ADT) calculated from the latest edition of the ITE Codes.		
a. Right-of-way				60'	60'	60'		40'	40'
b. Travel Pavement				22'	22'	20'		20'	18' gravel
c. Sidewalk/Pedestrian way				6'	6'	5'		5'	5'
d. Paved Shoulder				2' walk side 8' opp. Side	2' walk side 8' opp. Side	2' walk side 8' opp. Side		N/A	N/A
e. Gravel Shoulder				2' opp. Side	2' opp. Side	2' opp. Side		both sides	N/A
f. Enclosed Drainage				sidewalk side	sidewalk side	not required		N/A	N/A
g. Parking				one side	emergency	emergency		emergency	No
<b>Street Gradients:</b>									
a. Longitudinal (Min. to Max)				.05% to 6%	.05% to 7%	.05% to 8%		.05% to 9%	1.0% to 10%
b. Slide Slope (horiz. to vert.)				3 to 1	3 to 1	3 to 1		2 to 1	2 to 1
c. Road Crown				1/4"per ft	1/4" per ft	1/4"per ft		¼" to ½" per ft	¼" to ½" per ft
<b>Cul-de-sac:</b>									
a. Street Length to Radius				N/A	1,500'	1,200'		600'	400'
b. Boundary Radius				N/A	65'	60'		50'	50' or 40 X 40 turn tee
c. Paved Radius				N/A	50'	50'		40'	gravel 40' or 18' X 18'
d. Second Access				Yes	Yes; can be emergency only	Not desirable		Not Allowed	Not Allowed

# RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

DESIGN AND CONSTRUCTION STANDARDS FOR STREETS and PEDESTRIAN WAYS									
Page TWO	PUBLIC STREETS						PRIVATE STREETS		
Design and Construction Standards	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Average Daily Trips (ADT)	9,001 or more	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
<b>Intersection Design:</b>									
a. Frequency Centerlines	Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.		Commercial, light industrial and mixed use development(s) streets shall be constructed to no less than secondary collector standards and may be subject to higher standards depending upon the traffic generation and use(s) intended.	600'	400'	300'	Same standards as public streets (Primary collectors, secondary collectors, and minor streets) based on average daily trips count (ADT) calculated from the latest edition of the ITE Codes..	N/A	N/A
b. Maximum Angle				90°	80° - 90°	80° - 90°		75° - 90°	60° - 90°
c. Tangent section to paved edge				75'	50'	40'		40"	N/A
d. Maximum grade to paved edge				2% @ 75'	3% @ 50'	3% @ 40'		3% @ 40'	3% @ 25'
e. Curb radii				20'	20'	10'		10'	N/A
<b>Curves:</b>									
a. Tangent between Reverse Curves				200'	100'	100'		N/A	N/A
b. Min. centerline curve radius				400'	300'	150'		100'	N/A
<b>Street Materials cross-section:</b>									
a. Min. gravel sub-base				18"	12"	12"		12"	8"
b. Min. crushed gravel				6"	6"	6"		4"	4"
c. Bituminous Pavement				2"	2"	1 1/2"		1 1/2"	N/A
d. Bituminous Pavement Surface				1 1/2"	1	1		1"	N/A
e. Compacted Loam Slopes				6"	4"	4"		4"	4"

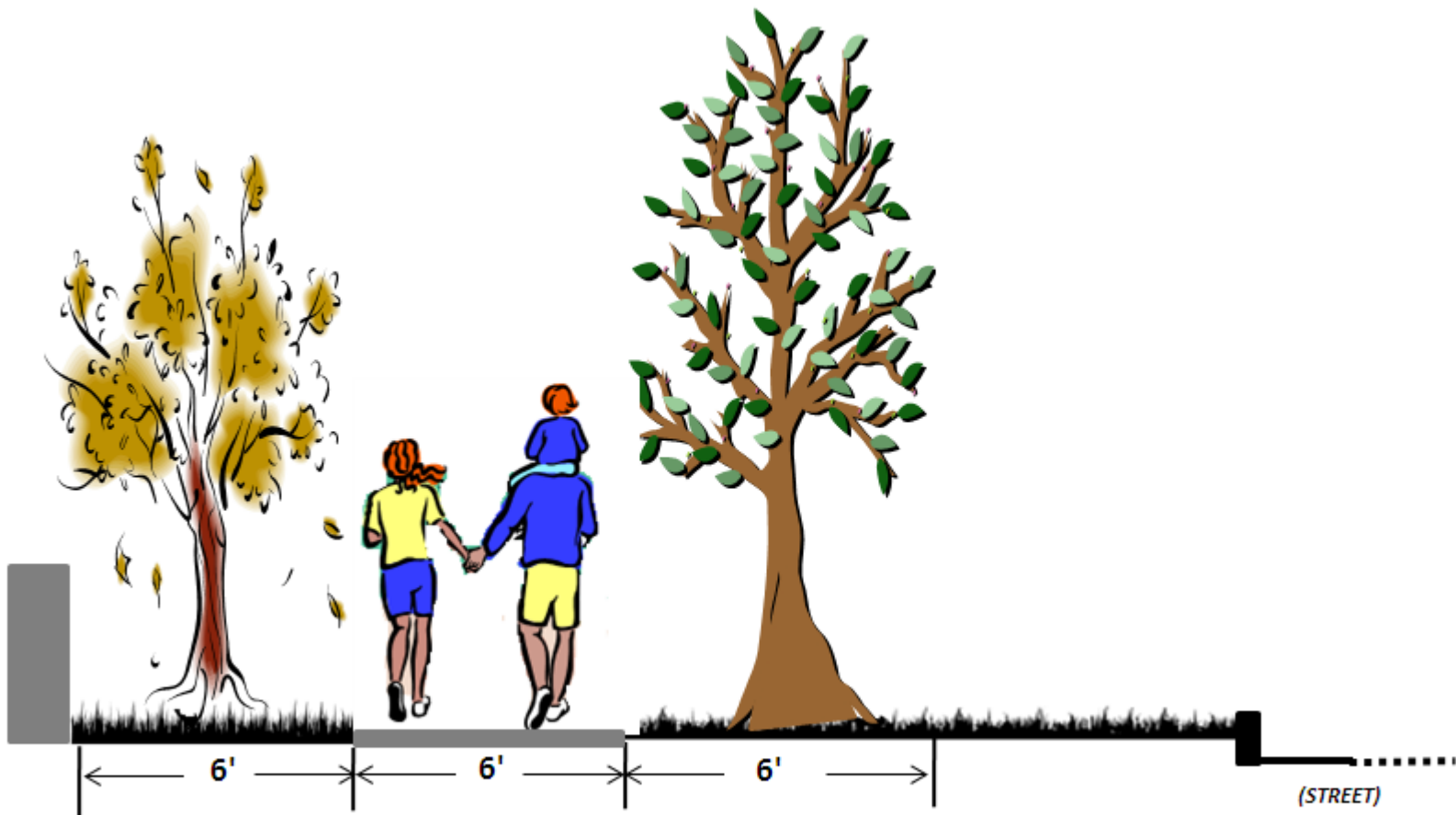
# RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

Table 1 - Chapter 16.8, Article IV									
DESIGN AND CONSTRUCTION STANDARDS FOR STREETS and PEDESTRIAN WAYS									
Page THREE	PUBLIC STREETS						PRIVATE STREETS		
Design and Construction Standards	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Average Daily Trips (ADT)	9,001 or more	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
<b>Sidewalk materials Cross-section:</b>	Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.		Commercial, light industrial and mixed use development(s) streets shall be constructed to no less than secondary collector standards and may be subject to higher standards depending upon the traffic generation and use(s) intended.			Planning Board Determination	Planning Board Determination		
a. Minimum Gravel Sub-base				18"	12"				
b. Minimum Crushed Gravel				9"	9"				
c. Min. and Max. Curb Reveal				6" - 8"	6" - 8"				
d. Curb Material				Granite	Granite				
e. Bituminous Pavement Base				2"	2"				
f. Bituminous Pavement Surface				1"	1"				

PAGE 4

Table 1 - Chapter 16.8, Article IV  
DESIGN AND CONSTRUCTION STANDARDS FOR STREETS and PEDESTRIAN WAYS



**US ROUTE 1, ARTERIAL and SECONDARY STREETS, and MIXED USE DEVELOPMENTS**  
*(Public easements may be requested)*

## **Article V. Acceptance of Streets and Ways**

### **16.8.5.1 Conditions.**

A street or way constructed on private lands by the owner(s) thereof and not dedicated for public travel, prior to the enactment of this Code, must be laid out and accepted as a public street or way by the Town Council only upon the following conditions:

1. The owners must give the Town a deed to the property within the boundaries of the street at the time of acceptance by the Town.
2. A plan of said street or way must be recorded in the York County registry of deeds at the time of its acceptance.
3. A petition for laying out and acceptance of said street or way must be submitted to the Town Council upon a form prescribed by the Commissioner of Public Works. Said petition must be accompanied by a plan, profile and cross-Section of said street as follows:
  - a. A plan drawn when practical to a scale of forty (40) feet to one inch, and to be on one or more sheets of paper not exceeding twenty-four (24) by thirty-six (36) inches in size. Said plan must show the north point; the location and ownership of all adjoining lots of land; rights-of-way and easements; streetlights and electric lines; boundary monuments, waterways, topography and natural drainage courses with contour at not greater than two-foot intervals; all angles, bearings and radii necessary for the plotting of said street and lots and their reproduction on the ground; the distance to the nearest established street or way, together with the stations of their side lines;
  - b. A profile of said street or way drawn to a horizontal scale of forty (40) feet to one inch and a vertical scale of four feet to one inch. Said profile must show the profile of the side lines and centerline of said street or way and the proposed grades thereof. Any buildings abutting the street or way must be shown on said profile;
  - c. A cross-Section of said street or way drawn to a horizontal scale of five feet to one inch and a vertical scale of one foot to one inch;
  - d. The location and size of water and sewer mains and surface water drainage systems as installed.
4. Such street or way must have been previously constructed in accordance with the standards and criteria established in Article IV of this chapter.

### **16.8.5.2 Acceptance of Streets and Ways Required in the Public Interest.**

Notwithstanding the provisions of any other Section hereof, the Town may at any time lay out and accept any street or way in the Town as a public street or way of said Town whenever the general public interest so requires. The cost of said street or way may be borne by the Town.

### **16.8.5.3 Easements.**

The Board may require easements for sewerage, other utilities, drainage and stream protection. In general, easements may not be less than twenty (20) feet in width. Wider easements may be required.

### **16.8.5.4 No Street or Way to be Accepted Until After Report.**

No street or way may be laid out and accepted by the Town Council until the Planning Board and the public

## RECODIFICATION - ORDAINMENT – 07/26/2010

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works commissioner have made a careful investigation thereof, and reported to the Town Council their recommendations in writing with respect thereto.

### **Article VI. Water Supply**

#### **16.8.6.1 Service Required.**

A. A public water supply system with fire hydrants must be installed, and approved in writing by the servicing water department.

B. If, in the opinion of the Board, service to each lot by a public water system is not feasible, the Board may allow individual wells or a central water supply system approved in writing by a civil engineer, registered in the state of Maine.

C. If the developer proposes a central water supply system, it must also be approved in writing by the Maine Department of Human Services.

D. Water supply system installations are at the expense of the developer.

E. All required approvals of a water supply system must be secured before official submission of the final plan.

#### **16.8.6.2 Quality and Pressure.**

The developer must demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting “Maine Rules Relating to Drinking Water (10-144 A.C.M.R. 231),” can be supplied to the development at the rate of at least three hundred fifty (350) gallons per day per dwelling unit and at an adequate pressure for fire fighting purposes.

#### **16.8.6.3 Storage.**

Storage must be provided as necessary to meet peak domestic demands and fire protection needs.

#### **16.8.6.4 Adequacy.**

The developer must demonstrate in the form of signed affidavits from the servicing water company or by engineering reports prepared by a civil engineer registered in the state of Maine, that the proposed development will not result in an undue burden on the source, treatment facilities or distribution system involved, or provide adequate assurance that such source, treatment facilities or distribution system will be modified to meet the expanded needs. The cost of such improvements is to be borne by the developer.

#### **16.8.6.5 Water Main Size.**

The minimum water main size permitted is to be as required by the Kittery water district installed at the expense of the developer.

#### **16.8.6.6 Design and Installation.**

The water supply system must be designed and installed in accordance with requirements of the Maine Department of Human Services.

#### **16.8.6.7 Dug Wells.**

Because they are difficult to maintain in a sanitary condition, dug wells must be prohibited by deed restriction and a note on the plan, unless permitted by the Board only if it is not economically or technically feasible to develop other groundwater sources. Such dug wells permitted must be constructed so as to prevent

infiltration of surface water into the well.

**16.8.6.8 Central Water Supplies.**

If a central water supply system is provided by the developer, location and protection of the source, and design, construction and operation of the distribution system and appurtenances and treatment facilities must conform to the recommendations included in the “Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969).”

**16.8.6.9 Hydrologic Analysis.**

The Board may require the developer to provide a detailed hydrologic analysis in accordance with the requirements of Section 16.9.1.5.

**Article VII. Sewage Disposal**

**16.8.7.1 Sewer System and Septic Disposal.**

A. Public sanitary sewer disposal system connections must be installed, in accordance Article VII o Chapter 16.8, with proposal and construction drawings reviewed and approved in writing by the servicing sanitary sewer agency.

B. If, in the opinion of the Board, service to each lot by a sanitary sewer system is not feasible, the Board may allow individual subsurface waste disposal, or a separate central sewage collection system to be used in accordance with Section 16.8.7.4.

C. In no instance may an initial installation septic disposal system be allowed in soils rated poor or very poor for such purpose by the Soil Suitability Guide for Land Use Planning in Maine.

D. If the developer proposes individual subsurface waste disposal or central collection system and waste generated is of a “significant” nature, or if waste is to be discharged, treated or untreated, into any body of water, approval must be obtained in writing from the Maine Department of Environmental Protection.

E. Sanitary sewer disposal systems must be installed, at the expense of the developer, to the individual lot boundary line.

F. All required approvals of a sewage disposal system must be secured before official submission of a final plan.

G. All subsurface sewage disposal systems must be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules. The Maine Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance. The following also apply:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, must not extend closer than one hundred (100) feet, horizontal distance, from the normal high water line of a water body or the upland edge of a wetland and,
2. Holding tanks are not allowed for a first-time residential use in the Shoreland Overlay Zone.

### **16.8.7.2 Design and Standards.**

A developer must submit plans for sewage disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code and/or Subsurface Wastewater Disposal Rules.

### **16.8.7.3 Public Sewer Connection Required.**

Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its nearest point, the developer must connect with such sanitary sewer line with a main as required by the sewer department, and provide written certification to the Board from the department that the proposed addition to service is within the capacity of the system's collection and treatment system.

### **16.8.7.4 Private Systems; on Unimproved Lots Created after April 26, 1990.**

A. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface sewage disposal. Additionally, on lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, comply with all the setback requirements of the Subsurface Wastewater Disposal Rules.

B. In no instance may a disposal area be permitted on soils or on a lot which requires a new system variance from the Subsurface Wastewater Disposal Rules.

C. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within the disposal area to assure that the proposed disposal area can be located on soils and slopes which meet the criteria of the State Plumbing Code.

### **16.8.7.5 Sanitary Facilities/Rest Rooms.**

A. Any development containing a retail use, or a food service use, or a combination thereof, exceeding ten thousand (10,000) square feet must provide public toilet facilities in accordance with subsections B, C and D of this section.

B. Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition; and, in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.

C. Where a retail development exceeds sixty thousand (60,000) square feet, each toilet facility must contain a minimum of two water closets.

D. Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.



## **Article VIII. Surface Drainage**

### **16.8.8.1 Stormwater Drainage.**

A. Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise drainage may be accomplished by a management system of constructed features such as swales, culverts, under drains, and storm drains.

B. To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per Section 16.8.8.2, Post Construction Stormwater Management.

C. Where a development is traversed by a stream, river, or surface water drainageway, or where the Planning Board determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is thirty (30) feet.

1. The minimum pipe size for any storm drainage pipe must be twelve (12) inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.

2. Except for normal thinning and landscaping, existing vegetation must be left intact to prevent soil erosion.

D. When proposed development does not require Maine Department of Environmental (MDEP) approval under MDEP Chapter 500 and 502 the following applies:

1. All components of the stormwater management system must be designed to limit peak discharge to pre-development levels for the two-year and twenty-five (25) year, twenty-four (24) hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development discharges directly to a major water body, peak discharge may be increased from pre-development levels provided downstream drainage structures are suitably sized.

2. The stormwater management system must be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and must include a surplus design capacity factor of twenty-five (25) percent for potential increases in upstream runoff.

3. Downstream drainage requirements must be studied to determine the effect of the proposed development. The storm drainage must not overload existing or future planned storm drainage systems downstream from the development. The developer is responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

a. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.

b. All Sediment and Erosion Control Measures must be designed in accordance with MDEP's "Maine Erosion & Sediment Control BMPs", March 2003.

c. Catch basins in streets and roads must be installed where necessary and located at the curblin.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.

d. Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.

e. Where the Board has required a stormwater management and erosion control plan and MDEP approval under their Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.

f. Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in accordance with Section 16.8.8.2, Post-construction Stormwater Management.

### **16.8.8.2 Post-construction Stormwater Management.**

#### **16.8.8.2.1 Purposes.**

This ordinance Section is enacted to provide for the health, safety, and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with Post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This Section seeks to ensure that Post-construction stormwater management plan are followed and stormwater management facilities including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.

#### **16.8.8.2.2 Authority.**

The Maine Department of Environmental Protection, through its dissemination of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Kittery, Maine as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 requires enactment of this section as part of the Town's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

#### **16.8.8.2.3 Applicability.**

##### **A. In General.**

This Section applies to all new development or construction activity including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre and; redevelopment or construction activity on premises already improved with buildings and structures or activities or uses, but does not include activities such as exterior remodeling.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

### B. Exception.

This Section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its Post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this Section, but must comply with the Post-construction stormwater management plan for that approved subdivision.

### C. Post-construction Stormwater Management Plan Approval.

1. General Requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in Section 16.8.8.2.3.B, Exception, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this Section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its Post-construction stormwater management plan and stormwater management facilities.

2. Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this Section is applicable, the applicant must notify the Town Planner if its Post-construction stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.

3. Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the Post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy and any unused balance remaining at that time will be refunded to the applicant.

### D. Post-construction Stormwater Management Plan Compliance

1. General Requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a Post-construction stormwater management plan approved under the Town's subdivision, site plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:

- a. that person or a Qualified Post-construction Stormwater Inspector hired by that person, must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-construction stormwater management plan;
- b. if the stormwater management facilities require maintenance to function as intended by the approved Post-construction stormwater management plan, that person must take corrective action(s) to address the deficiency or deficiencies; and

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

c. that person or a Qualified Post-construction Stormwater Inspector hired by that person, must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form provided by the Town, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved Post-construction stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by the approved Post-construction stormwater management plan, the person must provide a record of the required maintenance or deficiency and corrective action(s) taken.

2. Right of Entry. In order to determine compliance with this Section and with the Post-construction stormwater management plan, the Code Enforcement Officer may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.

### E. Annual Report.

Beginning July 1, 2009, and each year thereafter, the Town must include the following in its annual report to the Maine Department of Environmental Protection:

1. Cumulative number of sites that have stormwater management facilities discharging into their MS4;
2. Summary of the number of sites that have stormwater management facilities discharging into their MS4 that were reported to the Town;
3. Number of sites with documented functioning stormwater management facilities; and
4. Number of sites that require routine maintenance in order to continue the original line and grade, the hydraulic capacity, and the original purpose of improvements; or remedial action to ensure that stormwater management facilities are functioning as intended.

### F. Enforcement.

It is the duty of the Code Enforcement Officer to enforce the provisions of this section and take appropriate actions to seek the correction of violations. Enforcement of the Post-construction stormwater management regulations are conducted in accordance with Chapter 16.4.

## **16.8.8.2.4 Storm Drainage Construction Standards.**

### A. Materials:

1. Reinforced concrete pipe must meet the requirements of ASTM Designation C-76 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a safety factor of 1.2 on the .01 inch crack strength with Class B bedding. Joints are to be of the rubber gasket type meeting ASTM Designation C443-70, or of an approved performed plastic jointing material such as "Ramnek." Perforated concrete pipe must conform to the requirements of AASHTO M175 for the appropriate diameters.
2. Corrugated metal pipe must be bituminous-coated meeting the requirements of AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO Designation M196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads with a deflection of not more than five percent.
3. SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.

4. Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).

5. Catchbasins are to be precast concrete truncated cone Section construction meeting the requirements of ASTM Designation C478 or precast concrete manhole block construction meeting the requirements of ASTM C139, radial type. Castings are to be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast in place three thousand (3,000) psi twenty-eight (28) day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps must be set in a full mortar bed and with tops are to conform to the requirements of AASHTO M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings or AASHTO M183 (ASTM A283, Grade B, or better) for structure steel.

B. Drain inlet alignment is to be straight in both vertical and horizontal alignment unless specific approval for curvilinear drain is obtained in writing from the Commissioner of Public Works.

C. Manholes are to be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes are to be placed at a maximum of three hundred (300) foot intervals.

D. Upon completion, each catchbasin or manhole must be cleared of all accumulation of silt, debris, or other foreign matter and kept clean until final acceptance.

## **Article IX. Parking, Loading and Traffic**

### **16.8.9.1 General Standards.**

A. All development, special exceptions and changes in use must comply with the performance standards herein and, where applicable, those contained in Article V of this chapter. The Planning Board may impose additional reasonable requirements, which may include off-site improvements, based on the following considerations:

1. Sight distances along public rights-of-way;
2. The existence and impact upon adjacent access points and intersections;
3. Turning movements of vehicles entering and leaving the public streets;
4. Snow removal; and
5. General condition and capacity of public streets serving the facility.

B. Such requirements are intended to maintain traffic safety and an acceptable level of service throughout the impact area of the facility.

C. In front of areas zoned and designed for commercial use, or where a change of zoning to one which permits commercial use is contemplated, the street right-of-way and/or pavement width must be increased by such amount on each side as may be deemed necessary to assure the free flow of through traffic without interference by parked or parking vehicles, and to provide adequate and safe parking space for such commercial or business district.

D. The Town reserves the right to designate in conjunction with the Maine State Department of

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

Transportation all ingress and egress points to the public highway, and to select areas for the grouping and placement of signs and traffic directions.

E. All traffic flow in parking areas is to be clearly marked with signs and/or surface directions at all times.

F. Off-street parking must be constructed in accordance with Figure 2 for Chapter 16.8, set out at the end of this chapter.

### 16.8.9.2 Corner Clearances.

For purposes of traffic safety in all zoning districts, no building or structure other than public utility structures and traffic control devices may be erected, and no vegetation other than shade trees may be maintained above a height of two feet above the plane through the curb grades of intersection streets with a triangle, two sides of which are the edges of the traveled public ways for twenty (20) feet measured from their point of intersection, or in the case of rounded street corners, the point of intersection of their tangents. The Town is not responsible for violations which lead to accidents. The Town will direct, however, a continued program designed to identify intersections having traffic safety problems.

### 16.8.9.3 Off-street Loading Standards.

A. In those districts where off-street loading is required, the following minimum off-street loading bays or loading berths must be provided and maintained in the case of new construction, alterations, and changes of use:

1. Office buildings, hospitals, long-term nursing care facilities, convalescent care facilities, eldercare facilities, hotels and motels with a gross floor area of more than one hundred thousand (100,000) square feet: one bay;
2. Retail, wholesale, warehouse and industrial operations with a gross floor area of more than ten thousand (10,000) square feet:

10,001 to 40,000 square feet	1 bay
40,001 to 100,000 square feet	2 bays
100,001 to 160,000 square feet	3 bays
160,001 to 240,000 square feet	4 bays
240,001 to 320,000 square feet	5 bays
320,001 to 400,000 square feet	6 bays
Each 90,000 square feet over 400,000	1 additional bay

B. Each loading bay is to have minimum dimensions of seventy (70) feet by fourteen (14) feet and may be located either within a building or outside and adjoining an opening in the building. Every part of such loading bay is to be located completely off the street. In case of trucks, trailers, or other motor vehicles larger than the dimensions of the minimum loading bay habitually serve the building in question, or that said equipment can be kept on site while awaiting loading or unloading, additional space is to be provided, so that such vehicle parks or stands completely off the street.

C. The provisions of this section for off-street loading do not prohibit incidental curbside business deliveries, dispatches or services, provided that they are in compliance with all applicable state and local traffic

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

regulations.

D. The Board of Appeals has full authority to waive the requirements of this section if it is shown that appropriate parking and loading spaces will be maintained sufficient for intended use.

### 16.8.9.4 Off-street Parking Standards.

A. Off-street parking, in addition to being a permitted use, is considered as an accessory use when required or provided to serve conforming uses located in any district.

B. The following minimum off-street parking and loading requirements must be provided and maintained in case of new construction, alterations and changes of use. Such parking may be provided in the open air in design dependent spaces dimensioned as may be required to suit the particular use as indicated in Figure 2 for Chapter 16.8, set out at the end of this chapter, or in garages.

C. All spaces must be accessible from lanes of adequate size and location as per Figure 2 for Chapter 16.8, set out at the end of this chapter. In cases not specifically covered, the Town Board or officer with jurisdiction to approve the application is authorized to determine the parking requirements and projected development use intensity. Existing parking standards are to be used as a guide where applicable to ensure that a sufficient number of parking spaces are provided to accommodate the number and type of vehicles attracted to the development during peak parking demand times.

D. When determination of the number of parking spaces required results in a requirement of a fractional space, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half is counted as one parking space.

Automobile, truck and tractor repair and filling station	1 parking space for each regular employee plus 1 space for each 200 square feet of floor area used for service work.
Dwellings	2 vehicle spaces per each dwelling unit.
Elderly housing	1.5 parking spaces for each dwelling unit with 2 or fewer bedrooms. 2 parking spaces for each dwelling unit with more than 2 bedrooms.
Eldercare facilities	1 parking space per dwelling unit. 0.65 parking spaces per residential care unit.
Motels, hotels, tourist homes, rooming houses, or other rooming spaces associated with a permitted use	1 parking space for each rental unit plus 1 space for each 100 square feet of meeting room.
Schools  Nursing school and day care facilities (Ordained 9/26/11; effective 10/27/11)  Elementary and junior high schools	1 space for every 100 square feet of gross floor area used as school area. 1 parking space for each adult employee, plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment.

# RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

Senior high schools	1 parking space for each adult employee, plus 20 parking spaces for each 100 students or major fraction thereof of total enrollment.
Marinas and other water-oriented recreational facilities	
With launching facilities	3 parking spaces for every 2 slips or moorings, arranged for trailers.
Without launching facilities	1 parking space for each slip or mooring.
Hospitals	1 parking space per each three beds.
Long-term nursing care facilities and convalescent care facilities	1 parking space for each 4 beds.
Theaters, auditoria, churches and arenas	1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of assemblage space if no fixed seats.
Mortuary chapels	5 parking spaces for each chapel.
Retail stores and financial institutions	1 parking space for each 175 square feet of gross floor area.
Bowling alley	4 parking spaces for each bowling lane.
Drive-in restaurants, snack bars and fast food outlets	Minimum 15 parking spaces, plus 1 space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15.
Restaurant	1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15.
Offices, professional and public buildings	2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area.
Convenience stores or neighborhood grocery facilities	6 spaces in the rural residential zone; all other zones, 10 parking spaces.
Mobile home	2 vehicle spaces per each mobile home.
Transportation terminals	
In addition to meeting all applicable standards as enumerated above, transportation terminals must meet the following:	1 parking space for each employee, 1 parking space for each three seats of the terminal's major carrier vehicle, and 1 parking space for each rented vehicle to be based on-site.
Warehouse and storage	1 parking space for each 500 square feet of gross floor area except that portion of such facility which is used for retail sales and display, or office area, which adds additional parking in accordance with the standards for those uses.
Industry, manufacturing and business	1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1 spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade.



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

Bus parking	For each 25,000 square feet of gross floor area, retail business must provide one bus parking area. Said area(s) are to be 12' x 50' in dimension, marked on the parking lot surface and labeled as such. Bus parking must be located in the parking area as far from the store entrance(s) as possible.
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E. A parking area is allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.

F. A Parking area must meet the wetland and water body setback requirements for structures for the district in which such areas are located, per Table 1 of Chapter 16.9, Minimum Setback from Wetlands and Waterbodies, except in the Commercial Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least twenty-five (25) feet from the normal high-water line or the upland edge of a wetland. The setback requirement for a parking area serving public boat launching facilities, in zones other than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than fifty (50) feet from the normal high-water line or upland edge of a wetland if the Planning Board finds no other reasonable alternative exists.

G. Parking landscaping is required for parking areas containing ten (10) or more parking spaces and must have at least one tree per eight spaces. Such trees are to be located either within the lot or within five feet of it. Such trees are to be at least one and a half inches in diameter, with no less than twenty-five (25) square feet of unpaved soil or permeable surface area per tree. At least ten (10) percent of the interior of any parking area having twenty-five (25) or more spaces is to be maintained with landscaping, including trees, in plots of at least five feet in width.

H. Required off-street parking in all residential districts is to be located on the same lot as the principal building or use, except that where it cannot reasonably be provided on the same lot, the Board of Appeals may authorize residential off-street parking to be located on another lot within three hundred (300) feet of the residential uses served, as measured along lines of public access. Such parking areas must be held under the same ownership or lease as the residential uses served, and evidence of such control or lease is required. Leases obtained for this purpose must be reviewed by the Town attorney at the developer's expense and include requirement for notice to the Town upon termination of lease. Approval for uses dependent on such lease is terminated upon termination of the lease.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

I. If parking spaces are provided for employees, customers or visitors, then accessible parking spaces must be included in each such parking area in conformance with the following Table:

<b>Total Parking in Lot</b>	<b>Required Minimum Number of Accessible Spaces</b>
1—25	1
26—50	2
51—75	3
76—100	4
101—150	5
151—200	6
201—300	7
301—400	8
401—500	9
501—1,000	2% of total
1,001 and over	20 plus 1 for each 100 over 1,000

1. Each accessible parking space must contain a rectangular area at least nineteen (19) feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign displaying the International Symbol of Accessibility; pavement marking alone is not adequate to identify accessible parking spaces.

2. The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.

3. At least one accessible route is to connect from each accessible parking space to the accessible building entrance.

J. Required off-street parking in all commercial, business and industrial zones must be located on the same lot with the principal building or use, or within one hundred (100) feet measured along lines of public access, except that where off-street parking cannot be provided within these limits, the Board of Appeals may permit such off-street parking to be located a reasonable distance from the principal building or use, measured along lines of public access. Such parking areas must be held under the same ownership or lease, and evidence of such control or lease is required. Such lots must be located within business or industrial districts.

K Where off-street parking for more than six vehicles is required or provided, the following construction requirements apply:

1. Appropriate driveways from streets or alleys, as well as maneuvering areas, must be provided. Location and width of approaches over public sidewalk are to be approved by the Commissioner of Public Works. When access to parking areas is available from more than one street, the location of points of ingress and egress are to have the approval of the Planning Board.

2. The surface of driveways, maneuvering areas and parking areas must be uniformly graded with a

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

subgrade consisting of gravel or equivalent materials at least six inches in depth, well compacted and with a wearing surface equivalent in qualities of compaction and durability to fine gravel.

3. A system of surface drainage must be provided in such a way that the water runoff does not run over or across any public sidewalk or street or adjacent property. Where catchbasins are required, oil traps are to be provided.

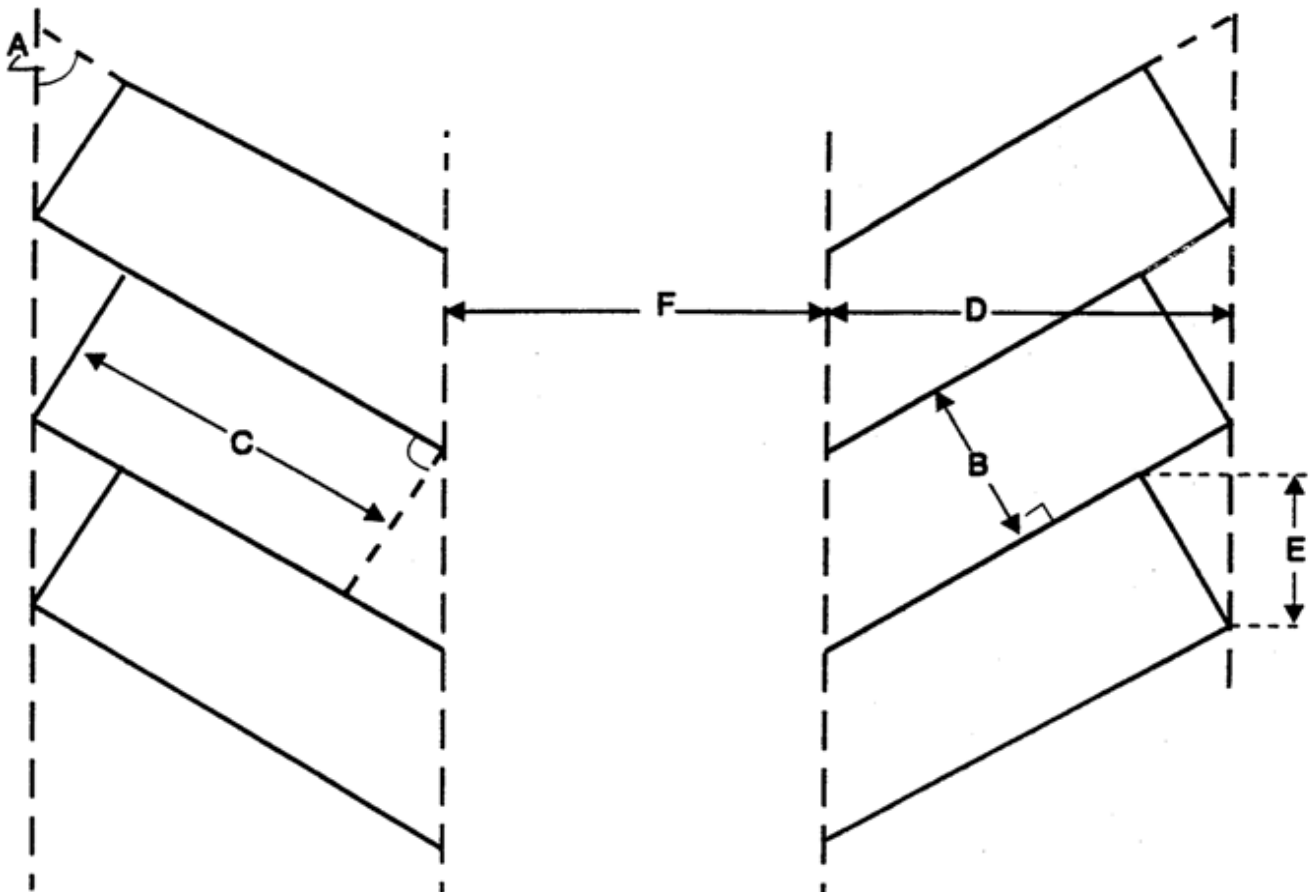
4. Where artificial lighting is provided, it must be shaded or screened so that no light source is visible from outside the area and its access driveways.

5. Where surface water drainage utilizes a municipal drainage system, the parking or driveway area may be required to have a bituminous asphalt surface or other approved equivalent.

L. The Board of Appeals may, in specific cases of hardship, reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets.

M. The Board of Appeals may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated that said parking facility will substantially meet the intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments.

Figure 2 - Chapter 16.8, Article IX PARKING SPACE DESIGN							
	A	B	C	D	E	F AISLE WIDTH	
to Curb	Angle (Degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Parallel	0	9	22	9.0	22.0	13	19
Diagonal	30	9	19	17.3	18.0	11	20
Diagonal	45	9	19	19.8	12.9	13	21
Diagonal	60	9	19	21.0	10.5	18	23
Perpendicular	90	9	19	19.0	9.0	24	24
Minimum Dimensions							
Note: Dimensions in feet unless otherwise indicated							



## **Article X. Signs**

### **16.8.10.1 Purpose.**

The purpose of this section is to balance the need for adequate identification and advertising for land uses to promote the economic well-being of the Town with the need to protect the public safety and maintain and enhance the physical appearance of the community. This objective is to be achieved by:

- A. Allowing adequate signage for the effective use of signs as a means of identifying, advertising and communication of land uses;
- B. Establishing the appropriate bounds for location, size, number, type and use of signs to protect traffic safety, preserve property values and to promote visual order and clarity; and
- C. Establishing procedures and regulations for the fair and consistent administration and enforcement of these sign restrictions.

### **16.8.10.2 General Requirements.**

A. No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except where Section 16.8.10.9 provides otherwise.

(Ordained 9/26/11; effective 10/27/11)

B. No exterior sign may be artificially illuminated except where hooded or shielded or otherwise designed to prevent direct light spilling onto traveled ways or neighboring property.

C. No sign may contain a moving message board, LED lighting or intermittent illumination, except where necessary in time/temperature/date signs.

D. Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.

E. No sign designed to be transported by means of wheels is allowed, unless said vehicle is used in the normal day-to-day transportation operations of the business. All trailer signs are prohibited.

F. Any changeable message signs must be integrated into a permanently-mounted sign. Such a changeable message Board is to be mounted a minimum of three and one-half feet above ground level.

G. All signs must be maintained in a safe and sound structural condition.

H. Advertising. No advertising or signage is permitted on wireless communication services facilities.

I. Any sign not expressly permitted herein is prohibited.

### **16.8.10.3 Sign Location.**

A. All signs must be permanently installed on the premises of the activity to which the advertising message refers, except where Section 16.8.10.7 provides otherwise or upon approval by the Town Council.

B. All signs must be located outside the full width of the right-of-way of any public way, unless authorized by the Town Council.

C. Except for signs authorized in Sections 16.8.10.7 and 16.8.10.9, freestanding signs erected after

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

October 1, 1997 must be located at least thirty-three (33) feet from the centerline of any U.S. or state numbered highway less than sixty-six feet (66) feet in width, and at least twenty (20) feet from the outside edge of the paved portion of any travel lane of any U.S. or state numbered highway which has both more than two travel lanes and a total paved portion in excess of twenty-four (24) feet in width.

D. Signs must not be placed on or above the roof of any building. All signs must be located below the level of the eaves of the portion of building where the sign is to be erected, except as follows:

1. Signage may be located above the eaves on a gable or dormer of a building providing it does not extend above or beyond the roof line of the gable or dormer; and
2. Signage may be located on a parapet wall provided the sign neither extends any more than eight feet above the roof-wall junction of the parapet wall nor extends beyond the height of the parapet wall.

**Note:** Please see Figure 3 of Chapter 16.8 at the end of this section to assist the reader in understanding acceptable and unacceptable locations of building-mounted signs according to the terms of Section 16.8.10.3.

E. Building-mounted signs which extend more than six inches from the surface of the structure must provide a minimum of eight (8) feet of vertical clearance to a walkway, parking area, private drive and ground surface. Such signs must not extend beyond the street right-of-way boundary unless authorized by the Town Council.

F. Freestanding signs must not extend higher than twenty (20) feet above the original ground level or the elevation of the centerline of the nearest street measured at the closest point to the sign, whichever is greater.

G. Signs must not be posted on trees, utility poles, traffic control devices, or unregistered motor vehicles or trailers. Signs posted on fences are treated as a type of freestanding sign. Any unpermitted and unallowed sign located in a public road right-of-way may be caused to be removed by the Town without notice to the owner of such sign.

H. No sign may be located so that it interferes with the safe sight distances necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets, private roads or driveways.

I. All building-mounted signs must be located only on the building that contains the activities or businesses advertised, except that up to ten (10) percent of the allowed signage for building-mounted signs in Section 16.8.10.6 may be allocated to signs mounted on fuel pumps and/or fuel pump canopies

J. In cases where multiple freestanding signs are permitted, any additional allowed smaller freestanding sign must face and be located along a separate publicly maintained street.

### **16.8.10.4 Number of Freestanding Signs.**

A. Except as otherwise authorized in this Section, as well as 16.8.10.8 and 16.8.10.9, each development is prohibited from having more than one freestanding sign.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

B. Multi-sided signs are considered as one sign however the square footage of each sign face is calculated to determine total sign area.

C. Where a development fronts on two publicly maintained streets and has designed and approved access onto both those publicly maintained streets, the development is allowed one additional freestanding sign that faces and is located along a second publicly maintained street in accordance with Section 16.8.10.6.

D. Where a development fronts on three publicly maintained streets and has designed and approved access onto each publicly maintained street, a third freestanding sign facing and located along the third publicly maintained street may be authorized at the Planning Board's discretion if it finds that other freestanding signage is not visible from the third street and that there is a need for a third freestanding sign to adequately communicate the business location to travelers on a third road fronted by the business.

### **16.8.10.5 Number of Building-mounted Signs.**

To prevent sign clutter, except for those signs authorized by Section 16.8.10.8 or 16.8.10.9, each business facility, which is on a site where two or more businesses occupy the same building, lot or development, is prohibited from having more than two building-mounted, non-temporary signs.

### **16.8.10.6 Sign Area.**

A. Residential Zones. Zones designated Residential - Rural Conservation, Residential -Rural , Residential - Suburban, Residential - Urban, and Residential - Village, on the zoning map are residential zones for the purpose of this section.

(Ordained 9/26/11; effective 10/27/11)

1. Accessory uses, including home occupations, are allowed sign area no greater than eight square feet.
2. Other permitted uses are allowed sign area no greater than sixteen (16) square feet, except as otherwise provided. Residential developments are also allowed twenty-four (24) square feet, provided signs are located within the development on premises owned by the developer or owners' association.

B. All Other Zones.

1. A single business situated on a lot of record is allowed a total sign area no greater than three hundred (300) square feet, or one and one-half square feet for every linear foot of building frontage, whichever is smaller. In any case, a single business on a lot of record is allowed a minimum sign area of seventy-two (72) square feet.
2. Where two or more business facilities occupy the same building, lot or development, allowable sign area is calculated as follows:
  - a. Total building-mounted sign area equals one and one-half square feet per linear foot of building frontage for each business facility. The total allowed building-mounted sign area may be allocated among individual business facilities at the property owner's discretion.
  - b. The development is allowed one freestanding sign not greater than one hundred fifty (150) square feet in sign area. An additional freestanding sign no greater than seventy-two (72) square feet in sign area facing and located along that secondary street is allowed if the development fronts on multiple streets and has designed and approved access onto each publicly maintained street. A third freestanding sign may be permitted at the Planning Board's discretion in accordance with Section 16.8.10.4.

**16.8.10.7 Off-premises Signs.**

A. An individual business or service, upon application, may be assigned no more than three off-premises business directional signs (OBDS). An OBDS must be designed and located so as to avoid conflict with other signs and minimize impact on the scenic environment through the following standards:

1. Dimensions: twelve (12) inches by forty-eight (48) inches;
2. Coloring: state standard blue background, white lettering, logo may be any color;
3. Reflectorization: optional;
4. Location: on existing assemblies (posts) where possible. No more than two assemblies per intersection approach;
5. Restricted areas: An OBDS must not be placed on an inbound leg of the Kittery traffic circle within four hundred (400) feet of its outer perimeter, or adjacent to points of scenic or historical interest, including but not limited to federal, state, and local parks and reserves, recognized historic sites and buildings, water bridges and cemeteries.

B. An off-premises sign which advertises commercial or other activity without advertising any specific enterprise (generic signs) may be approved by the Planning Board at size and location to be specified.

**16.8.10.8 Temporary Signs.**

All temporary signs must be installed on the premises of the activity to which the advertising message refers. Moveable signs are prohibited as temporary signs. The following types of temporary signs are allowed with an approved sign permit:

A. The use of one temporary sign, other than a trailer sign, at any one time per business that is mounted to the building or attached to a freestanding sign structure for the purpose of advertising special events, provided that such signs are displayed for no longer than a combined total of twenty-one (21) days in any calendar quarter (January 1 - March 30, etc...) may be permitted. Total sign area for a temporary sign must not exceed seventy-two (72) square feet. The allowed twenty-one (21) day display period may be divided into no more than three separate, non-overlapping temporary periods of not less than seven days.

B. One additional temporary sign, other than a trailer sign, mounted to the building or to a freestanding sign structure is permitted per legally participating site for the duration of each Town Council approved sidewalk sales event.

**16.8.10.9 Signs Allowed Without a Sign Permit.**

The following types of signs, in sizes and under conditions stated, are allowed without a Town sign permit, but must conform with all other provisions of Article X of Chapter 16.8 except for the provisions restricting the number of signs (Sections 16.8.10.4 and 16.8.10.5) and limiting the total sign area (Section 16.8.10.6).

A. Public Information Signs. Signs for the control of traffic and other regulatory purposes, route markers, street signs, warning signs, utility, danger or warning signs, signs which indicate direction to hospitals, churches or other places of worship, or other public facilities;

B. General Information Signs. Signs which provide direction or instruction such as, location of telephone, rest rooms, parking, automatic teller machines (ATMs), transit stops, entrances and exits, open and closed



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

signs, where installed entirely upon the property to which they pertain. “Enter” and “Exit” signs must not exceed four square feet in size. All other general information signs must not exceed two square feet in size. Except for identifying approved off-premises parking stalls, no logos, trademarks or names of businesses are permitted on general information signs. The Planning Board may approve increased sizes and/or the use of logos or names of businesses on general information signs when considered necessary to promote safety or eliminate confusion;

C. Memorial Tablets. Grave markers, signs commemorating a historical figure or event, names or dates of buildings to which a sign is attached;

D. Public Notices and Community Signs. Official notices posted by public employees in performance of their duties, and any sign for Town sponsored or supported events or facilities as approved by the Town Council;

E. Flags of any Government or Recognized Political Subdivision. The flag of any government or recognized political subdivision is allowed, provided it is displayed no higher than fifty (50) feet above the original ground level or the elevation of the centerline of the nearest street measured at the closest point to the flag, whichever is greater. A single memorial flagpole installation sponsored by private funding not to exceed 129 feet in height installed on Town-owned or regulated property at Memorial Circle is allowed;  
(Ordained 9/26/11; effective 10/27/11)

F. Religious Symbols;

G. Building Street Numbers. In accordance with the street-numbering map on file with the Town of assessing department;

H. Political Campaign Signs. Signs bearing political messages relating to an election, primary or referendum, provided these signs may be displayed on:

1. Public property not earlier than thirty (30) days prior to the election, primary or referendum to which they relate and are removed not later than two days thereafter,

2. Private property without time constraints;

I. Interior Signs. Signs placed inside a building which are located at least ten (10) feet inside the building or otherwise not oriented to be viewed from outside the building;

J. Vehicular Signs. Signs painted on or affixed to registered motor vehicles or trailers where such signs are clearly incidental to the regular transportation function of the vehicle;

K. Service Club Signs. Service club signs may be placed within the right-of-way of a street with approval of the Commissioner of Public Works. Such signs are encouraged to be consolidated on a single designated assembly structure at major entrance ways to the Town. In addition, such signs not exceeding four feet in size may be erected at locations where meetings of such service clubs are convened;

L. Real Estate Signs. Any sign advertising real estate for sale, lease or rent provided:

1. Each sign does not exceed twelve (12) square feet,

2. Each sign is located on the property being advertised except one sign may be located as an off-premises

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

directional sign provided the sign does not restrict safe sight distances or impair safety,

3. No more than two signs are erected per property being advertised, and

4. Each sign is removed within sixty (60) days of transfer of Code;

M. Window Signs. Any sign that is placed inside a window and is visible from the exterior of the window provided such signage covers no more than fifty (50) percent of the area of any window;

N. Legally-Required Signs. Any sign required by local, state or federal law with sign area no greater than two square feet or the minimum size required by law, whichever is larger;

O. Food Menu Signs. Up to two signs advertising food items for sale on the premises at a legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed provided that:

1. The total sign area of each such food menu sign on the site must not exceed thirty-two (32) square feet, and

2. Such food menu signs must either be building-mounted or comply with the front yard requirements for structures and be located within seventy-five (75) feet of the restaurant;

P. Under Canopy, Pedestrian-Oriented Signs. One building-mounted business identification sign per business facility not to exceed ten (10) square feet in size per sign where two or more businesses occupy the same building with a pedestrian walkway and canopy that parallels and connects the front entrances of the business facilities. The sign must be oriented toward pedestrians using the walkway, be located under the canopy near the main entrance to the business advertised and solely identify the business name or logo; and

Q. Construction Phase and Contractor Signs. Signs, other than trailer signs, identifying the name of a contractor working on the premises or describing a construction project erected only during the construction phase of a development provided each sign does not exceed seventy-five (75) square feet.

### **16.8.10.10 Signs in the Shoreland Overlay and Resource Protection Overlay Zones.**

The following provisions govern signs in the Conservation, Shoreland Overlay and Resource Protection Overlay Zones except where either is overlaid by the Commercial Fisheries/Maritime Uses Overlay Zone:

1. Signs relating to goods and services sold on the premises are allowed, provided such signs do not exceed six (6) square feet in area and do not exceed two (2) signs per premises.

2. Signs relating to goods or services not sold or rendered on the premises are prohibited.

3. Name signs are allowed, provided such signs do not exceed two (2) signs per premises, and do not exceed twelve (12) square feet in the aggregate.

4. Residential users may display a temporary single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

5. Signs relating to trespassing and hunting are allowed without restriction as to number, provided no such sign exceeds two (2) square feet in area.

6. Signs relating to public safety are allowed without restriction.

7. Signs higher than twenty (20) feet above the ground are prohibited.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

8. Signs may be illuminated only by shielded, non-flashing lights.

### **16.8.10.11 Sign Permit Application Procedures.**

A. No person may erect, post, enlarge, relocate, replace or modify a sign except in conformance with a permit issued by the Code Enforcement Officer and also approved by the Town Planner. Notwithstanding the above statement, the following signs may be erected or modified without a sign permit:

(Ordained 9/26/11; effective 10/27/11)

1. Signs authorized in Section 16.8.10.9;
2. Changes to nameplates or “shingles” to reflect occupancy changes on an existing approved freestanding sign identifying individual occupants on the site provided no change is made to the shape or size of the sign or sign area;
3. Characters, letters and numbers may be changed on approved changeable message signs without a sign permit, provided no other change is made to the sign; and
4. Signs may be maintained, cleaned, or repainted provided no change is made to the shape or size of the sign or to the sign area and provided no new business name is advertised.

B. A complete sign application submission consists of the following items submitted to the Code Enforcement Officer:

1. A completed sign permit application form provided by the Town;
2. An application fee in accordance with a fee schedule established by the Town Council; and
3. A self-addressed, stamped envelope.

C. Complete applications must be reviewed by the CEO for compliance with this Code. Complete sign permit application submissions must be returned by the CEO after rendering a decision to the applicant if accompanied by a SASE. Incomplete sign permit application submissions will only be returned to the applicant if accompanied by a SASE.

D. Unless the proposed sign is located within the shoreland zone, the CEO must issue, deny, or seek a formal Planning Board opinion within fourteen (14) working days of receiving a complete sign permit application submission. If either a Planning Board opinion is sought or the proposed sign is located within the shoreland zone, the CEO must issue or deny the application within thirty-five (35) calendar days of receiving a complete sign permit application submission.

E. The sign permit must be approved if the proposed sign conforms in every respect with the requirements of this Article. In the CEO's absence, or if no action is taken by the CEO within the above time limits, the Town manager, or the Town manager's designee, may approve or deny the sign permit application submission.

F. All new signs approved as of October 1, 1997 must display a numbered sign permit sticker provided by the Town in a visible location at the lower right-hand corner of the sign face. Failure to display such sign permit sticker on signs erected as of October 1, 1997 will be considered a violation of this Article. Replacement stickers are available from the CEO based on a fee schedule established by the Town Council.

**16.8.10.12 Nonconforming Existing Signs.**

A. All signs lawfully existing on October 1, 1997 that do not conform to the terms of this Article may be continued and maintained subject to Section 16.8.10.12B.2 but may neither be enlarged nor substantially altered except in conformity with this Article.

B. Lawfully nonconforming signs must be made to conform or be removed if any of the following circumstances occur, individually or in combination, for a consecutive three year time period:

1. The sign has ceased to be accurate by reason of vacancy or closure of the business which the sign advertises;

2. The sign face is blank, illegible, obscured, painted over, concealed or otherwise not decipherable.

C. In no event may the degree of nonconformity of any sign or type of signage on any lot be increased.

**16.8.10.13 Sign Violation and Appeal.**

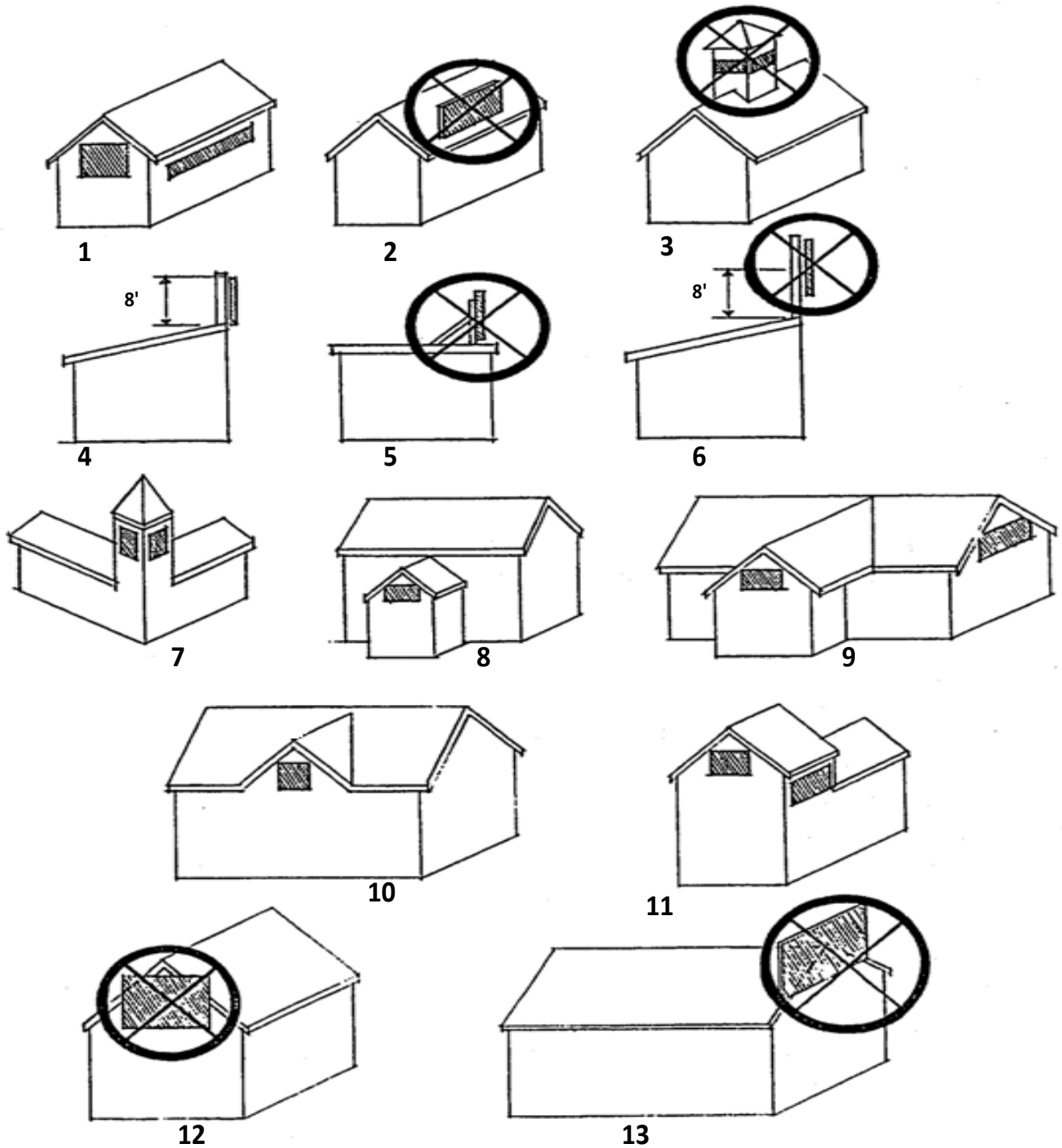
A. The CEO must notify and order the owner to immediately correct any sign that endangers public safety. Signs that endanger public safety include, but are not limited to, those which are dangerous by reason of structural defect or those that interfere or obstruct a driver's safe operation of a motor vehicle.

B. A nonconforming sign which is required to conform to the sign regulations per Section 16.8.10.12 must be brought into conformity.

C. Enforcement of the provisions of this Article is in accordance with Chapter 16.4.

**Figure 3 - Chapter 16.8, Article X**  
**EXAMPLES of ALLOWED and PROHIBITED SIGN PLACEMENT**

These drawing are illustrative and meant to be an aid to the reader  
Please refer to Chapter 8, Article X, for full details



**Article XI. Cluster Residential and Cluster Mixed-Use Development.** (Ordained 9/24/12; effective 10/25/12)

**16.8.11.1 Purpose.**

To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this Article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:

- A. efficient use of the land and water, with small networks of utilities and streets;
- B. preservation of open space and creation of recreation areas;
- C. maintenance of rural character, preserving farmland, forests and rural viewscales;
- D. preservation of areas with the highest ecological value;
- E. location of buildings and structures on those portions of the site most appropriate for development;
- F. creation of a network of contiguous open spaces or 'greenways' by linking the common open spaces within the site and to open space on adjoining lands wherever possible;
- G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;
- H. preservation of historic, archaeological, and cultural features; and
- I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment.

**16.8.11.2 Permitted Zones.**

- A. Cluster residential development is permitted in various zones as indicated in Chapter 16.3.
- B. Cluster mixed-use development is permitted only in the Business Park (B-P) zone.

**16.8.11.3 Dimension Standards Modifications.**

Notwithstanding other provisions of this Code relating to dimensional standards, the Planning Board, in reviewing and approving proposed residential or mixed-use development under this Article, may modify said dimensional standards to permit flexibility in approaches to site design in accordance with the Code standards. The Board may allow subdivision or site development with modified dimensional standards where the Board determines the benefit of a cluster development is consistent with the Code. Such modifications may not be construed as granting variances to relieve hardship.

**16.8.11.4 Property Ownership.**

Tracts or parcels of land involved in a development proposed under this Article must be in single ownership; or, must be the subject of an application filed jointly by the owners of all properties included; or, must have an applicant with vested interest in all property included. Pursuant to the requirements of this Article, mobile home parks or mobile homes on individual lots are not eligible for cluster residential development.

**16.8.11.5 Application Procedure.**

All development reviewed under this Article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch Plan:

1. Calculations and maps to illustrate:

- a. proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;
- b. non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7);
- c. net residential acreage and net residential density; and
- d. open space as defined in Section 16.8.11.6.D.2 of this Article.

2. A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of thirty-three percent (33%), easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.

3. A written statement describing the ways the proposed development furthers the purpose and objectives of this Article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites worthy of preservation.

4. The location of each of the proposed building envelopes. Only developments having a total subdivision or site plan with building envelopes will be considered.

B. An applicant with a project that includes proposed public open space must obtain Town Council acceptance for the public land or easement following Preliminary Plan approval. Town Council acceptance is contingent upon receipt of Final Plan approval by the Planning Board.

**16.8.11.6 Standards.**

A. The purpose and intent of this Code must be upheld for any reviews conducted under this Article.

B. A cluster mixed-use and cluster residential development must meet all requirements for a subdivision (and site plan where applicable), and all other applicable federal, state and local ordinances, except as modified by action of the Planning Board, where authorized.

C. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning Board's satisfaction that alternative methods used result in a development that is compatible with Section 16.8.11.

D. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller than twenty thousand (20,000) square feet per single family residence and eight thousand (8,000) square feet per bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, Title 12 MRS § 4807-A.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

### E. Open Space Requirements:

1. Open space must contain at least 50% of the total area of the property, and no less than 30% of the total net residential acreage, as defined.
2. Total calculated open space must be designated as follows (See Open Space definitions Section 16.2):
  - a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public.
3. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.
4. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.
5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in applicant's written statement. In the Business Park (BP) zone, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the built and natural environments.
6. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.
7. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g. a common green, multi-purpose athletic field, gardens, and playgrounds).

F. In the Business Park (BP) zone, the maximum building height is forty (40) feet. If the Planning Board finds that provisions for fire safety are adequate to allow buildings of greater height, then the Board may allow a building height of up to sixty (60) feet as a part of the development plan review and approval process.

G. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.

H. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland must be a part of the commonly held land.

I. The developer must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any other features determined by the Planning Board to be a part of the proposed development.

1. Orientation. Buildings, view corridors and other improvements are to be designed so scenic vistas and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation.

2. Utility Installation. All utilities are to be installed underground, wherever possible. The Planning Board



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

must require the developer to adopt a prudent avoidance approach when permitting above ground electrical service installations. Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.

3. Recreation. Facilities must be provided consistent with the development proposal. Active recreation requiring permanent equipment and/or modification of the site may not be located within the wetland setback areas or contiguous reserved open space areas.

4. Buffering. Planting, landscaping, form and siting of building and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development.

5. Development Setbacks.

Setbacks from wetlands and water bodies, must demonstrate compliance to Table 16.9 of Chapter 16.9.4.3. These setbacks must be permanently maintained as no cut, no disturb buffer areas. If the setback areas are not of substantial vegetation to provide a sufficient buffer, the Planning Board may require additional plantings.

J. The location of subsurface wastewater disposal systems and a reserve area, if required, must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator, licensed by the state of Maine, must accompany the plan. If the subsurface disposal system is an engineered system, approval from the Maine Department of Human Services, Division of Health Engineering and the municipal plumbing inspector must be obtained prior to Planning Board approval.

### **16.8.11.7 Open Space Dedication and Maintenance.**

A. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.

B. The open space(s) must be shown on the development plan with appropriate notation on the face thereof to indicate that:

1. The open space must not be used for future building lots; and
2. A part or all of the open space may be dedicated for acceptance by the Town.

C. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial entities, the bylaws of the proposed homeowner's or similar governing association for commercial owners (in the Business Park zone), and/or the recorded covenants must specify maintenance responsibilities and be submitted to the Planning Board prior to approval. See subsection A above.

D. Association Responsibilities.

1. Maintenance: The homeowner's association or similar association for commercial owners is responsible for the maintenance of open space(s), and other common facilities unless and until accepted by the Town. The stormwater management system must be maintained in accordance with Section 16.8.8.2, Post-construction Stormwater Management. Associations must maintain adequate funds to defray these

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

expenses. The Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these expenses.

2. Inspection: Annually, by June 30, the developer or association must complete and submit to the Code Enforcement Officer a Maintenance Compliance Report on a form prepared by the Code Enforcement Officer certifying compliance with any open space use and protection requirements. Said report must be completed by a Maine licensed civil engineer or certified soil scientist.

E. Transition of Responsibility. The developer must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so the transition of responsibilities is seamless.

### **16.8.11.8 Pre-Development Requirements.**

Prior to the beginning of site work, the applicant must file with the Town Planning Department all required performance guarantees and inspection escrows in forms acceptable to the Town Manager in accordance with Chapter 16.10.8.2.2.

## **Article XII. Mobile Home Parks, Seasonal Trailer Parks and Campgrounds**

### **16.8.12.1 Compliance.**

Applications for development of mobile home parks, seasonal trailer parks, or campgrounds must comply with all state laws and local ordinances, and meet the requirements of subdivision law, except as stipulated below. Such developments in existence prior to adoption of this Code may be enlarged only if the extension complies with the terms specified herein.

### **16.8.12.2 Trailer Parks and Campgrounds.**

In any district where campgrounds or trailer parks are permitted under the terms of this Code, the following regulations and minimum standards apply:

- A. A time limit is placed on the occupancy of any one camping space on a continuing basis as follows: twelve (12) weeks for the period May 15th to October 15th of each year, and two weeks for all other periods. No trailers or mobile homes other than such as are camping units as defined herein are permitted within any camper park, temporarily or otherwise;
- B. A campground or trailer park may not be constructed on less than five acres of land;
- C. Each tent site must be provided with a masonry or metal fireplace approved by the Fire Chief;
- D. Spaces in campgrounds and trailer parks may be used by travel trailers, equivalent facilities constructed in or on automotive vehicles, tents, or other short-term shelter devices;
- E. A trailer park or campground must provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code and the Maine Department of Human Services. In no case may less than one toilet, lavatory and shower be provided for each sex for every ten (10) camping and tent sites or major portion thereof;

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

F. Trailers must be parked on sites containing a minimum of two thousand five hundred (2,500) square feet and having a minimum frontage along the traveled way of fifty (50) feet, exclusive of drives and aisles.

G. Tent sites must contain a minimum of two thousand five hundred (2,500) square feet. There must be a minimum of thirty (30) feet between tents;

H. Trailers must be so parked in spaces that:

1. There will be a minimum of fifteen (15) feet between vehicles.
  2. There will be a minimum of fifteen (15) feet between all trailers and the exterior boundary of the park.
  3. There will be a minimum of twenty-five (25) feet between all trailers and all public rights-of-way located inside the boundaries of the trailer park or campground. Setbacks from roads outside the trailer park will be a minimum of one hundred fifty (150) feet.
  4. No camping unit or structure may be located less than one hundred (100) feet from any residence.
  5. Buffering: planting, landscaping, disposition and form of building and other improvements, or fencing and screening is to be utilized to integrate the proposed development with the landscape and the character of any surrounding development.
- I. The storage, collection and disposal of refuse must not create health hazards, rodent harborage, insect breeding areas, accident hazards, or air pollution; and
- J. No unoccupied camping unit may be stored or exhibited for sale for commercial purposes within the park.

### **16.8.12.3 Mobile Home Parks.**

- A. Mobile home parks, by special exception, may be located as indicated in Chapter 16.3.
- B. Lots within a shoreland zoning district must meet the lot area, setback and shore frontage requirements for that district.
- C. Lots in a mobile home park must meet the following lot size, width and density requirements:
1. Lots by public sewer:

Minimum lot area	6,000 square feet
Minimum lots width	50 feet
  2. Lots served by individual on-site subsurface wastewater disposal system:

Minimum lot area	20,000 square feet
Minimum lot width	100 feet
  3. Lots served by a central on-site subsurface wastewater disposal system\*:

Minimum lot area	12,000 square feet
Minimum lot width	75 feet
- \*The overall density of a mobile home park served by a central on-site subsurface wastewater disposal system may be no greater than one unit per twenty thousand (20,000) square feet of total park area.
4. The overall density of the mobile home park is the combined area of its mobile home lots plus:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- a. The area required for road rights-of-way;
  - b. The area required for buffer strips, if any;
  - c. For areas served by public sewer, an open space area for storage and recreation equal to ten (10) percent of the combined area of the individual lots; and
  - d. The area within the municipality's shoreland setback.
5. All buildings on the lot, including accessory buildings and structures, but excluding open decks and parking spaces, may not cover more than fifty (50) percent of the lot area.
- D. The following setback rules apply to all mobile homes and accessory buildings:
1. Front and side setbacks are to be twenty (20) feet; rear setbacks, ten (10) feet. If these requirements conflict with the requirements of the Code 38 M.R.S. §435-449, Shoreland Protection, or subsequent amendments or revisions thereto, the stricter standards apply.
  2. If a lot is on a public road, the setback must conform with the residential setback requirements applicable to other residential dwelling units in the zone.
  3. So as to avoid monotony and sameness, the Code Enforcement Officer may allow:
    - a. the front setback on a private road within a mobile home park to be varied provided no mobile home may be closer than ten (10) feet from the right-of-way and the average distance is at least twenty (20) feet for all units.
    - b. the replacement and/or relocation of a mobile home to be located no closer to the front yard setback than the existing mobile home or pad.
  4. Carports of noncombustible materials are not subject to setback requirements.
  5. The CEO may allow side yard setbacks to be reduced to five feet provided a distance of twenty (20) feet is maintained between mobile homes for the purpose of providing more usable yard space on one side of the home.
  6. A minimum twenty (20) foot separation must be maintained between all mobile homes in all directions.
- E. All buildings on the lot, including accessory buildings and structures, but excluding open decks and parking spaces, may cover not more than fifty (50) percent of the lot area.
- F. Where a developer elects to create a mobile home park where all land is under unified ownership, the park plan must demonstrate that the development standards described herein are met.
- G. Privately-owned roads within the mobile home park must be designed by a professional engineer, registered in the state of Maine, and built according to accepted engineering standards and in accordance with 30-A, M.R.S.
1. The layout and general development plan for major and minor access streets within the mobile home park, together with the location and dimensions of access junctions with existing public streets and rights-of-way must be approved by the Planning Board.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

2. For mobile home parks expected to generate two hundred (200) trips per day or more, there must be at least two entrances from public streets or roads.

H. Mobile home park streets which intersect with public roads must meet the following standards:

1. Angle of Intersection. The desired angle of intersection is to be ninety (90) degrees. The minimum angle of intersection is to be seventy-five (75) degrees.

2. Grade. The maximum permissible grade within seventy-five (75) feet of the intersection is two percent.

3. Minimum Sight Distance. The minimum sight distance must be ten (10) times the posted speed limit on the existing road. Sight distances is measured from the driver's seat of a vehicle that is ten (10) feet behind the curb or edge of shoulder line with the height of the eye three and one-half feet above the pavement and the height of object four and one-fourth feet.

4. Distance from Other Intersections. The centerline of any street within a park intersecting an existing public street must be at least one hundred twenty-five (125) feet from the centerline of any other street intersecting that public street.

I. Right-of-way and pavement width are to be as follows:

1. Two-way park roads must have a minimum right-of-way of twenty-three (23) feet and a minimum paved surface of twenty (20) feet. On-street parking is prohibited.

2. One-way streets must have a minimum right-of-way of eighteen (18) feet and a minimum paved surface of fourteen (14) feet. On-street parking is prohibited.

3. Parking lanes are to be a minimum of eight feet in width, if provided.

4. Cul-de-sac turnarounds are to have minimum radii of fifty (50) feet at the outer edge of the pavement, exclusive of any parking areas.

5. Curvilinear streets must be utilized wherever possible. No street within the park may be more than two hundred (200) feet without a curve or bend.

6. If the developer intends to dedicate park streets to the public, such streets must meet municipal standards as contained in Article V of Chapter 16.8.

J. No mobile home lot may have vehicular access directly onto a state highway.

K. A traffic impact analysis is required if the park will generate more than five hundred (500) trips/day.

L. Parking requirements for mobile home parks areas follows:

1. For each mobile home lot there must be provided and maintained at least two off-street parking spaces. This requirement may be waived if an equivalent number of spaces are provided by a parking lane. Each space is design dependent as indicated in Figure 2 for Chapter 16.8, set out at the end of this chapter. This requirement may be waived if an equivalent number of spaces are provided by a parking lane.

2. In addition to occupant parking, off-street guest and service parking must be provided within the

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

boundaries of the park at a ratio of one space for each four mobile home lots. Such parking must be reserved for that sole use. This requirement may be waived if a parking lane provides an equivalent number of spaces.

3. On-street parking is prohibited unless an eight-foot parking lane is provided, in which case on-street parking may be permitted on the side of the road where the parking lane is located.

M. The mobile home park must contain pedestrian walkways that link all units and all service and recreational facilities. Such walkways are to be adequately surfaced and lit. A portion of the road surface may be reserved for walkways provided the street width is increased accordingly. Walkways should be a minimum width of three feet.

(Ordained 9/26/11; effective 10/27/11)

N. Outdoor lighting is to be provided to adequately illuminate internal streets and pedestrian walkways. Lights are to be sized and directed to avoid adverse impacts on adjacent properties and vehicular traffic.

O. Open space calculations are as follows:

1. For mobile home parks served by a public sewer, an area amounting to ten (10) percent of the total area devoted to individual lots must be set aside for open space and/or recreation. Such space is to be accessible and usable by all residents of the park. Parking space, driveways and streets and buffer areas are not considered usable open space but community recreation buildings, pools and courts are considered as open space.

2. At least fifty (50) percent of the required open space must consist of land that is suitable for active recreation.

3. All developed open space is to be designed and landscaped for the use and enjoyment of the park residents and maintained for their long-term use. Plans for these areas must be submitted by the developer.

4. To the maximum extent possible, undeveloped open space must be left in its natural state. Improvements to make trails for walking and jogging or to make picnic areas are permitted.

5. The developer must submit, as part of the application, a copy of that portion of the proposed park rules and a plan which specify how the open space is to be used and maintained and what conditions apply to its use. The plan must specify the area to be dedicated open space or recreation.

6. Open space must be maintained and used for its approved purposes.

P. All mobile home parks must provide permanent electrical, water and sewage disposal connections to each mobile home in accordance with applicable state and local rules and regulations. If other than public water is to be utilized, the water system(s) must be capable of delivering two hundred fifty (250) gallons per day per lot of water certified to be of primary drinking water standards.

Q. Signs and advertising devices are prohibited in a mobile home park except:

1. One identifying sign at each entrance of the mobile home park sized in compliance with Article XII of Chapter 16.8 may be installed.

2. Directional and informational signs for the convenience of tenants and the public relative to parking,

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

office, traffic movement, et cetera are permitted.

3. Mobile/manufactured home “For Sale” signs, provided that such signs that face a public road may be no more than ten (10) square feet and limited to two signs per mobile home park.

4. Mobile/manufactured homes address signs are permitted when in compliance with Article XII of Chapter 16.8.

5. The styles and location of the identifying sign must not interfere with vehicle sight distance and be constructed in accordance with Article XII of Chapter 16.8.

R. At least three hundred (300) cubic feet of enclosed tenant storage facilities must be conveniently provided on or near each mobile home lot for the storage of materials and equipment.

S. A storm drainage plan must be prepared by a professional engineer, registered in the state of Maine, in accordance with Section 16.8.8.1, Stormwater Drainage. Such plan must be approved by the York County Soil and Water Conservation District or found satisfactory and compliant to the Code by the Town’s engineering peer reviewer prior to Planning Board approval of the final plan.  
(Ordained 9/26/11; effective 10/27/11)

T. Groundwater requirements for mobile home parks are as contained in Section 16.9.1.5, which must be complied with for all mobile home park applications.

U. Each mobile home lot must be provided with an area for refuse storage. Within a maximum one hundred fifty (150) feet from each mobile home lot, there must be a flytight, watertight and rodent-proof container capable of storing the amount of refuse that the mobile home park for which it was designed could generate within one week as well as any separation containers as required by the Kittery recycling program. The park management is responsible for disposal of refuse from such containers at least once a week.

V. Buffering requirements are as follows:

1. A fifty (50) foot wide buffer strip must be provided along all property boundary lines that:

- a. Abut residential land which has a gross density of less than half that proposed in the park; or
- b. Abut residential land that is zoned at a density of less than half that proposed in the park.

2. Further, no structures, streets or utilities may be placed in the buffer strip, except that they may cross a buffer strip to provide services to the park.

3. Within twenty-five (25) feet of any property line and within the buffer strip, visual screening and/or landscaping must be provided. The visual screening may consist of fences, berms, landscaping (such as shrubs or trees) and/or natural existing vegetation. This screening is to effectively screen at least eighty (80) percent of the homes from view from the adjacent property and be maintained throughout the life of the project.

W. The owner or operator of a mobile home park is responsible for ensuring the maintenance of all park-owned structures, open space areas, roads and pedestrian ways/sidewalks. Park management must comply with state laws. Compliance with this Code does not exempt the park owner, developer, or manager from complying with other applicable local, state and federal codes and regulations.

(Ordained 9/26/11; effective 10/27/11)

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

X. No development or subdivision which is approved under this Section as a mobile home park may be conveyed to another use without the approval of the Planning Board, and meeting the appropriate lot size, lot width, setback and other requirements contained in this Code. The approved final plan is to be recorded at the York County registry of deeds and filed with the Town and have noted the following restrictions as well as any other notes or conditions of approval: (1) "The land within this park must remain in a unified ownership and the fee to lots or portions of lots not be transferred." (2) "No dwelling unit other than a mobile home unit may be located within the park."

### **Article XIII. Manufactured Housing**

#### **16.8.13.1 Standards.**

Standards for manufactured housing include the following:

- A. All mobile home units must be manufactured after June 15, 1976 and shall have a manufacturer-installed sticker indicating HUD approval.
- B. All units must be manufactured with a pitched, shingled roof, with a minimum slope three inches on twelve (12) inches (3:12).
- C. All units must have residential-type siding, such as clapboards, shakes, horizontally applied aluminum, or vinyl resembling clapboards.
- D. All units, excluding individual mobile home park installations, must have a permanent foundation which may be either a full basement, or a poured or block frost wall.
- E. All other sections of this Code must be adhered to.

### **Article XIV. Junkyards and/or Automobile Salvage Yards**

#### **16.8.14.1 Buffering.**

Buffering will be one hundred (100) feet on all sides except on the street, where two hundred (200) feet will be the minimum. Trees, shrubbery and fencing, not less than eight feet in height, or all three may be required by the Board to restrict visibility of the area from the road and neighbors. Land contour is to be taken into consideration. Approval of the junkyard plan is required by the police, highway and fire departments before any permit is presented to the Town Council for consideration.

#### **16.8.14.2 Buildings.**

Office, control or storage building must be inside the buffered area, and no more than a maximum of thirty (30) feet in height. The adequacy of buffering is to be considered in allowing heights over twenty (20) feet.



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

### **16.8.14.3 Junk Piles.**

Junk piles may only be inside the buffered area and piled no higher than fifteen (15) feet.

### **16.8.14.4 Waste.**

No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State Plumbing Code will apply for sanitary waste, and any state laws regulating toxic waste. Separate storage must be maintained for toxic waste, including but not limited to oil, grease, gasoline and solvents. This waste must be removed at least twice a year by an accredited dealer in such wastes. All tanks of vehicles must be drained and contents properly disposed of.

### **16.8.14.5 Drainage.**

Provision must be made for proper drainage of stormwater or other wastewater, so that contaminated, rusted or other noticeable effluent does not go beyond actual junk area or into buffering. Special attention is to be given to acceptable drainage of normal stormwater. Article VII of Chapter 16.8 also applies.

### **16.8.14.6 Hours of Operation.**

Work in connection with demolishing or wrecking cars, or purchasing or selling items is permitted only on Monday through Saturday between the hours of seven a.m. and six p.m.

### **16.8.14.7 Signs.**

One four-foot by six-foot maximum, non-illuminated sign is permitted at the entrance to the property.

### **16.8.14.8 Cleanliness.**

Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or other nuisance permitted outside of the buffered area.

### **16.8.14.9 Permits.**

A permit for not more than one year's operation is required, in addition to the state permit. The Town fee is as set by the Town Council. Periodic inspections must be made by the Code Enforcement Officer during the year to insure compliance with the state and local ordinances.

### **16.8.14.10 Other Standards Application.**

All other applicable standards of this chapter not specifically mentioned here, such as parking, noise, etc., also apply to this use.

## **Article XV. Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies**

### **16.8.15.1 Standards.**

Development involving piers, wharves, marinas and other uses projecting into water bodies must conform to following standards:

A. In accordance with 38 M.R.S. §435 through 449, all dimensional and other standards (excluding setbacks from water bodies) of this Code apply to structures and uses projecting into a water body beyond the normal high-water mark.

B. Boathouses, while convenient to locate near the water, are not considered functionally water-dependent uses and must meet the same setback requirement as principal structures. The State of Maine no longer

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

issues permits for construction of boathouses below the normal high water line due to the adverse environmental impact; therefore new boathouses must be located on uplands.

- C. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, or other structure beyond the normal high-water line.
- D. Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.
- E. The location must not interfere with existing developed recreational and maritime commerce or natural beach areas.
- F. The facility must be located so as to minimize adverse effects on fisheries.
- G. The facility must be a water-dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area.
- H. No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- I. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland may be converted to residential dwelling units in any district.
- J. Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland must not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
- K. Applicants proposing any construction or fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.
- L. Proposals for any principal marine structure use, any residential joint and/or shared-use pier, or any residential development use pier require Planning Board approval.
- M. A residential development containing five (5) or more lots in a zone permitting a residential development use pier may construct only one residential development use pier.
- N. Commercial development of the shorefront must provide for access by the general public as part of a shorefront development plan.
- O. Only one pier, ramp and float structure is permitted on any noncommercial or non-industrial lot.
- P. Marine-related permanent structures located below the mean low water line require the following permits, leases, and approvals:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. Port Authority approval;
2. Department of Environmental Protection permit pursuant to the Natural Resources Protection Act, 38 M.R.S. §480C;
3. Army Corps of Engineers permit;
4. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator approval;
5. Building permit.

### **Article XVI. Lots**

#### **16.8.16.1 Dimensions.**

The lot size, width, depth and shape and orientation and the minimum building setback lines must be appropriate for the location of the development and for the type of development and use contemplated. The lot configuration should be designed to maximize access to solar energy for building sites with suitable orientation.

#### **16.8.16.2 Off-street Parking.**

Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street parking and service facilities for vehicles required by type of development and use contemplated.

#### **16.8.16.3 Land Subdivision.**

The subdividing of land must conform to the requirements of Chapter 16.3.

#### **16.8.16.4 Double/Reverse Frontage Lots.**

Double frontage and reverse frontage lots are to be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet, across which there may be no right of access, is to be provided along the lot lines abutting such a traffic artery or other disadvantageous use.

#### **16.8.16.5 Side-lot Lines.**

Side-lot lines must be substantially at right angles or radial to street lines.

#### **16.8.16.6 Substantially Larger Lots.**

Where a tract is subdivided into lots substantially larger than the minimum size required in the zone in which a subdivision is located, and where no covenants exist to preclude lots from resubdivision, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these standards.

#### **16.8.16.7 Multiple Frontages.**

When lots have frontage on two or more streets, the plan and deed restrictions must indicate vehicular access to be located only on the least-traveled way.

#### **16.8.16.8 Divided Lots.**

If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of such barrier to meet the

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

minimum lot size unless in conformance with Article II of Chapter 16.7.

### **16.8.16.9 Lot Shape.**

A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than five to one.

### **16.8.16.10 Access to Arterial Street.**

Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have vehicular access directly onto the arterial street. This requirement must be noted on the plan and in the deed of any lot with frontage on the arterial street.

## **Article XVII. Utilities**

### **16.8.17.1 Approval.**

The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, et cetera, must be approved by the Board and installed in accordance with accepted engineering practice.

### **16.8.17.2 Underground Installation.**

Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.

## **Article XVIII. Landscaping**

### **16.8.18.1 General.**

Street trees, esplanades, and open green spaces may be required at the Board's discretion. Where such improvements are required, they are to be incorporated in the plan and executed as construction progresses. Said improvements must be maintained throughout the life of the development. A "Life Maintenance" note is to be included on the plan.

## **Article XIX. Sprinkler Systems**

### **16.8.19.1 Requirement.**

A. An approved automatic sprinkler system must be installed in all areas of new buildings meeting any or all of the following criteria:

1. Three or more stories in height; or
2. Thirty-six (36) or more feet in height; or
3. One hundred thousand (100,000) cubic feet in volume or ten thousand (10,000) square feet in floor area; or

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

4. Multiple-family or multiple-occupant dwelling and/or all lodging units; or
  5. Any single-family attached units such as garden apartments or townhouse, with three or more units attached together; or
  6. All motels, hotels, rooming houses, inns or other structures containing more than two dwelling or living units, hotel or motel rooms.
- B. An approved automatic sprinkler system must be installed in new additions to existing buildings and to the existing building(s) meeting any or all of the following criteria:
1. When the addition causes the building to become three or more stories in height; or
  2. When the addition causes the building to become thirty-six (36) or more feet in height; or
  3. When the addition causes the building to become one hundred thousand (100,000) cubic feet in volume or ten thousand (10,000) square feet in area;
  4. When the addition to, or renovation of the existing building results in the end use becoming a motel, hotel, rooming house, inn, or other structure which contains more than two dwelling or living units, hotel or motel rooms; or
  5. When the addition to, or renovation of the existing building results in the end use becoming single-family attached units — such as garden apartments or townhouses, with three or more units attached together.

### **16.8.19.2 Sprinkler System Standards.**

- A. An approved automatic sprinkler system means a system installed in accordance with the National Fire Protection Association (NFPA) Standard 13 or NFPA 13D, or a system otherwise lawfully approved in writing by the State Fire Marshal's office provided, however, any such system remains subject to the Fire Chief's approval under subsection C of this section.
- B. Any structure requiring the installation of a NFPA Standard 13 system must have a fire department connection with location approved by the Fire Chief.
- C. The type of system to be installed and its adequacy of life safety from fire in accordance with the provisions of this Code must be reviewed and approved by the Fire Chief or duly authorized designee provided adequate provision is made for life and property safety.
- D. All sprinkler systems installed under this Code must have the following:
1. A tamper switch alarm at the system shutoff;
  2. An evacuation alarm for the building that will sound when the sprinkler system is activated;
  3. Such evacuation alarm is to be audible throughout the entire structure;
  4. An outside water flow alarm;
  5. Butterfly valves will not be allowed on any Standard 13 system.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

E. Occupied or unoccupied buildings or portions thereof of any under construction having a sprinkler system in place, must maintain all sprinklers and standpipe systems and all component parts in a workable condition at all times, and it is unlawful for any owner, occupant or other person whatever, to reduce the effectiveness of the protection these systems provide, except that this does not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary for the purposes of conducting tests, repairs, alterations or additions. Provided that the test, repairs, alterations or additions are done in such a way as to avoid the creation of a safety hazard.

F. For the purposes of this section, the term “building” means any structure excluding single-family dwellings, two-family dwellings and any barn or stable used exclusively for agricultural purposes, having a roof supported by columns or walls and intended for the shelter, storage, housing or enclosure of persons, animals or property. The term “building” also includes any garage, outbuilding or other accessory building used for any commercial or industrial purposes.

G. Any building having more than one sprinkler riser must have the risers separately zoned and wired to a local energy alarm panel to provide zone identification upon activation. The energy alarm panel is to be located as near as possible to the main exit door. There must also be a building map located at the energy alarm panel showing each zone of the building.

H. A lock box must be provided outside the main entrance to any buildings regulated hereunder, containing a key to allow access to all fire department areas. So as to be compatible with existing lock box systems, the type of lock box must be approved by the Fire Chief.

I. Any structure containing a sprinkler system is required to have a yearly test completed on the system by a qualified sprinkler technician. A written copy of the yearly test report must be forwarded to the Fire Chief.

### **16.8.19.3 Permit.**

A. A permit must be obtained from the Fire Chief before the start of construction of the system and a set of blueprints showing the entire sprinkler system and the rate of flow provided to and approved by the Fire Chief in order to obtain the permit.

B. A copy of the permit must be forwarded to the CEO and no certificate of occupancy may be issued until the system has been properly installed, tested by a qualified technician and approved by the Fire Chief or duly authorized designee.

### **16.8.19.4 Fees and Fines.**

A. A sprinkler system permit fee is to be paid with the permit request in such amount as established by Council. The fee for a sprinkler permit is as set out in Appendix A.

B. Any person, firm or corporation being the owner or having control or use of any building or premises who violates this Section of this Code is guilty of a civil offense and liable to be fined not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00) for each offense. Each day such violation is permitted to exist after notification constitutes a separate offense.

### **16.8.19.5 Sprinkler Administrative Appeal.**

If any party is aggrieved by a determination of the Fire Chief, under the requirements of this section, a written appeal may be filed with the BOA within ten (10) days from the date of notification of such determination by

the Fire Chief. Such written appeal must set forth a concise statement of the grounds upon which the party contends the Fire Chief's determination to be in error.

## **Article XX. Subdivision Noise Pollution Buffer**

### **16.8.20.1 Green Strip.**

Subdivision design must minimize the possibility of noise pollution either from within or without the development (from highway or industrial sources) by providing and maintaining a green strip at least twenty (20) feet wide between the abutting properties that are so endangered.

## **Article XXI. Temporary, Intra-Family Dwelling Unit**

### **16.8.21.1 Purpose.**

Allowing by special exception a "temporary, intra-family dwelling unit" is intended to relax density requirements per dwelling unit in this Code that have the effect of prohibiting persons from establishing temporary living quarters accessory to a residence expressly for a relative(s), a care provider or a care receiver. This Section is not intended to allow a property owner to circumvent the general density standards to create an additional apartment for financial gain.

### **16.8.21.2 Standards.**

The following standards must be satisfied to approve a proposed temporary, intra-family dwelling unit:

- A. The temporary, intra-family dwelling unit must be an accessory use to a residential structure.
- B. The owner of the property must reside on the premises unless the BOA finds that other ownership or tenancy characteristics are consistent with the intent of this section.
- C. No more than one temporary, intra-family dwelling unit per dwelling unit is allowed.
- D. Additional off-street parking must be provided if the BOA finds that the proposed use will generate more parking demand than is currently available. Such additional parking must not be located within the required front yard unless the BOA finds that the proposed design and location of such a parking area would not detract from the character of the residential neighborhood.
- E. Floor plans must be submitted showing:
  - 1. The floor plan of the existing dwelling;
  - 2. The proposed floor plan to create the temporary, intra-family dwelling unit; and
  - 3. A plan to convert the use of the property to its original dwelling status or another conforming permanent use.
  - 4. The above submission requirements may be waived or modified by the BOA provided the intent of this section is satisfied.
- F. To assure that a proposed temporary, intra-family dwelling unit does not become an apartment yielding a financial gain, at least one internal accessible connection between the two units must be shown in the floor plan for creation of the temporary intra-family dwelling unit unless the BOA determines such a connection is

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

not practicable.

G. The architectural treatment of constructing the temporary, intra-family dwelling unit must be such as to portray and retain the character of the principal dwelling so as to preserve the land values in the neighborhood. Factors to consider include, but are not limited to, the number and location of entrances, exterior facade materials, pitch of the roof, and the number of driveways.

H. The temporary, intra-family dwelling unit must share common utility metering with the dwelling for water and electric services unless preexisting separate metering legally exists.

I. Buildings currently nonconforming as per lot coverage may be utilized for a temporary, intra-family dwelling unit as long as the proposed dwelling unit would not increase nonconformity with regard to lot coverage.

J. The “minimum land area per dwelling unit” requirement of each zoning district does not apply to a temporary, intra-family dwelling unit.

K. The applicant must demonstrate that there is adequate wastewater disposal capacity for the temporary, intra-family dwelling unit.

L. The temporary, intra-family dwelling unit must not be used for transient lodging nor may the availability of such dwelling unit be advertised.

M. The temporary, intra-family dwelling unit must not be used to yield a financial gain.

### **16.8.21.3 Conditions.**

Any approval of a temporary, intra-family dwelling unit must be subject to the following additional conditions:

A. The applicant must annually submit a signed and dated certification by January 15th of each year to both the Code Enforcement Officer and the Board of Appeals that the temporary, intra-family dwelling unit is occupied by either a:

1. Person(s) related by blood or marriage within the sixth degree to an occupant of the property;
  2. Personal care provider(s) to an occupant of the property;
  3. Personal care receiver(s) from an occupant of the property; or
  4. Person(s) with a demonstrably familial type relationship to an occupant of the property.
5. Failure to submit such an annual certification constitutes the expiration of any approval of the temporary, intra-family dwelling unit. Within forty-five (45) days of an expiration of the approval, the use of property must be converted to its original dwelling status or another conforming permanent use.

B. Upon a permanent vacancy of the temporary, intra-family dwelling unit or the applicant no longer residing on the premises, the use of the property must be converted to its original dwelling status or another conforming permanent use.

C. Reapplication to the BOA upon a change in ownership of the property.

D. Joint signature of submitted floor plans by the applicant and a representative of the BOA signifying the approved design of the temporary, intra-family dwelling unit, and the manner to convert the use of the property to its original dwelling status or another conforming permanent use.



## **Article XXII. Home Occupation**

### **16.8.22.1 Purpose.**

A. It is the intent of these regulations governing home occupations to balance the economic and community benefits of allowing home-based businesses with the goal of protecting the quality of life of the surrounding residential neighborhood from unreasonable or unsafe intrusions and nuisances inappropriate to a residential setting. The regulations attempt to ensure that any home-based business operates in a manner that respects the neighborhood in which it is situated.

B. Regulation of home occupations should not prohibit beneficial and unobtrusive uses and should provide standards to protect the health, safety and general welfare of the surrounding neighborhood. A home occupation should not degrade the residential character of the neighborhood.

C. These regulations take a two-tier approach to regulating home occupations. At the least intrusive level are business activities that by their nature and intensity will be compatible with a residential location. These types of businesses are considered “minor home occupations” and require only review by the Code Enforcement Officer for compliance with the standards. A “major home occupation” in a residential district has the potential to be incompatible with its neighborhood setting. Therefore, a public hearing with notification to abutting property owners and BOA approval is necessary.

D. A more extensive business activity that does not satisfy the standards for a “major home occupation” is treated as a type of commercial use and does not qualify as an acceptable type of home occupation. Such businesses should be located in an appropriately-zoned area of Town.

### **16.8.22.2 Minor Home Occupation Standards.**

A. Compliance with the Definition of a “Home Occupation.”

1. An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.

2. As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.

B. Number of Workers. There must be no more than three persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.

C. Prohibited Uses. The following uses are categorically prohibited as minor home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; machine shop; wholesale use; junkyard; auto salvage yard; seafood cooking, processing and/or cleaning; bait sales.

D. Business Hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of seven p.m. and eight a.m., except for a

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

bed and breakfast, a day care facility or a functionally water-dependent use.

### E. Nuisances.

1. Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes, traffic, or electrical interference detected at the property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.
2. When reviewing a functionally water-dependent use, the above standards allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting property owners.

F. Parking. A plan must be submitted showing sufficient and safe parking for customers', clients' and workers' use during normal business operations. To the maximum extent practicable, parking should be arranged so as to avoid vehicles backing out into the street.

In addition to parking required for the residence, the following parking is required:

1. One parking space per nonresident worker at the site during the peak shift;
2. One parking space if clients or customers frequently visit the site;
3. One parking space per adult student up to the maximum class size; or
4. One parking space per rental unit.

G. The parking design standards in Figure 2 for Chapter 16.8, set out at the end of this chapter (e.g., aisle width, stall size, etc.) may be modified for parking by workers if the parking arrangement will still provide for practical off-street parking adequate to prevent parking from overflowing the site.

H. With the exception of a bed and breakfast with more than three rooms for rent, three additional off-street parking spaces should satisfy the parking demand for a minor home occupation. Any recurring observed parking overflow is a violation of these standards.

I. The CEO may approve the joint use of a parking area where it is clearly demonstrated that the parking area will be available for use by customers or workers during the hours of operation due to the variation in time of use.

J. Outdoor Storage. All outdoor storage of equipment, vehicles, items or equipment associated with the home occupation is prohibited except for the following:

1. One vehicle used in conjunction with the home occupation;
2. Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and
3. Vehicles owned by residents of the premises with valid license plates.
4. All bait must be stored indoors and must be kept refrigerated or otherwise stored to prevent offensive odors.

K. Business Conduct. All business activities on the site must take place within the dwelling or enclosed

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

buildings, except for outdoor recreational uses, agriculturally-oriented uses or functionally water-dependent uses.

L. Refuse and Recyclables. All refuse and recyclables must be stored within an enclosed building. No outdoor dumpsters are allowed. All waste materials from the home occupation must be removed from the premises on at least a monthly basis.

M. Traffic. The home occupation must not result in creating or significantly exacerbating a traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty (20) foot fixed axle, thirty (30) foot total length truck is prohibited.

N. Retail Sales. Retail sales in which customers do not come to the premises are permissible, such as mail order or telephone sales. On-site retail sales are limited to the following:

1. Sales of products grown, raised or produced on the premises. For the purposes of this subsection, the term “produced” is not to be construed to allow the assembly of a product from components produced elsewhere; and

2. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon.

3. All other on-site retail sales are prohibited as a minor home occupation.

O. Health and Safety. The proposed use must not create a health or safety hazard.

### **16.8.22.3 Major Home Occupation Standards.**

A. Compliance with the Definition of a “Home Occupation.”

1. An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.

2. As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.

B. Number of Workers. There must be no more than five persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.

C. Prohibited Uses. The following uses are categorically prohibited as major home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; junkyard; and auto salvage yard.

D. Business Hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of seven p.m. and seven a.m., except for a bed and breakfast, a day care facility or a functionally water-dependent use. This limitation may be modified by the BOA provided the proposal satisfies the intent of this section.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

### E. Nuisances.

1. Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes, traffic, or electrical interference detected at the property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.
2. When reviewing a functionally water-dependent use, the above standards allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting property owners.

F. Parking. A plan must be submitted that provides safe and sufficient off-street parking to meet the needs of the business to prevent parking from overflowing off the site. Any recurring observed parking overflow is a violation of these standards. The creation of more than four off-street parking spaces must be located, designed, screened and landscaped to minimize adverse impact on abutting properties.

G. Outdoor Storage. All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for the following:

1. One vehicle used in conjunction with the home occupation:
2. Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and
3. Vehicles owned by residents of the premises with valid license plates.
4. All bait must be stored indoors and must be kept refrigerated or otherwise stored to prevent offensive odors.

H. Business Conduct. All business activities on the site must take place within an enclosed building or be screened from view of abutting properties and from all publicly-maintained streets, except for outdoor recreational uses, agriculturally oriented uses or functionally water-dependent uses. This standard may be modified by the BOA provided the proposal satisfies the intent of this section.

I. Refuse and Recyclables. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets. No emptying of dumpsters is allowed before eight a.m. or after seven p.m.

J. Traffic. The home occupation must not result in creating or significantly exacerbating a traffic hazard. Furthermore, the home occupation must not create an objectionable increase in vehicle traffic considering the type, time and amount of vehicle traffic generated and the design and capacity of the roads to the site and traffic normal for the neighborhood.

K. Retail Sales. Retail sales on the premises are limited to the following:

1. Sales in which customers do not come to the premises, such as mail order or telephone sales;
2. Sales of products grown, raised or produced on the premises;
3. Sales of seafood harvested by the residents of the premises;
4. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

shampoo and hair brushes at a beauty salon; and/or

5. Sales by appointment only for which any signage identifying the business states a “by appointment only” policy.

L. Health and Safety. The proposed use must not create a health or safety hazard.

M. Neighborhood Compatibility. The proposed use is determined to be compatible with the surrounding neighborhood. In reaching this determination, the following factors are to be considered:

1. The nature of the property;
2. The physical characteristics of the neighborhood, including the amount of nonresidential activity;
3. Hours of operation;
4. Intensity of the activity;
5. Potential to degrade the quality of life for residents of the surrounding neighborhood; and
6. The cumulative impact of existing home occupations and other accessory uses both on the premises and in the surrounding neighborhood.

N. Large Lots. When a seventy-five (75) foot deep buffer yard is provided between all business activities (including storage and parking, except a driveway) and contiguous properties, and the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure the home occupation activities from an abutting property, the BOA may relax the above standards, except those pertaining to nuisances and prohibited uses, if the use is considered to comply with the intent of this subsection.

O. Annual Renewal. Upon approval of a major home occupation by the Board of Appeals, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. Operation of a major home occupation with an expired certificate of occupancy is a violation of this Code.

The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.

## **Article XXIII. Wireless Communication Services Facilities**

### **16.8.23.1 Wireless Communication Services Facilities and Associated Development.**

A. Purpose. This Section is designed and intended to balance the interests of the residents of the Town, telecommunications providers, and telecommunications customers in the siting of wireless communication services facilities (WCSF) within the Town. These standards are also intended:

1. To avoid or minimize the adverse impacts of such facilities on: visual; environmental; historically significant areas; health and safety; and property value impacts;
2. To require the use of alternative structures for the purposes of co-location of carriers and minimize the total number of towers located within the Town;
3. To permit the construction of new towers only where all other opportunities have been exhausted;
4. To require the users of WCSF and antenna structures to configure them in a way that minimizes the need for additional WCSF in the Town;
5. To provide for the removal of WCSF and associated development which are no longer being used for telecommunications purposes;
6. These regulations are not intended to place any restrictions on privately-operated and licensed amateur radio operators as per FCC regulations.

#### **B. Zone/Performance Standards/Dimensional Requirements.**

1. New WCSF are permitted within one thousand (1,000) feet from the I-95 corridor centerline, North of Dennett Road with Planning Board approval conforming to the performance standards and dimensional requirements. Shared use of “pre-existing accessory-use towers” and “alternative tower structures” in all zones is permitted with Town Planner’s approval provided the tower or structure height is not increased. Location on existing structures in a manner that camouflages or conceals the presence of antennas or towers, also referred by the industry as “stealth” is permitted with Town Planner’s approval in all districts except the resource conservation, shoreland and resource protection overlay zones. The Town Planner may request Planning Board review of any proposed siting of a WCSF facility.

2. Height. Towers, antennas and all WCSF may not exceed a height of one hundred fifty (150) feet except for those towers expressly satisfying all co-location requirements for four or more carriers which may be constructed to a maximum height of one hundred ninety-nine (199) feet.

#### **3. Setbacks.**

a. All telecommunications towers must be set back from the lot lines a distance equal to at least one hundred twenty-five (125) percent of the tower height.

b. Tower, guyed wires and accessory facilities must meet the minimum zoning district setback requirements.

#### **4. Aesthetics, Landscaping, Buffers and Fencing.**

a. Towers and antennas are to have a neutral finish or be painted a neutral color as approved so as to

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

reduce visual impact.

b. All WCSF must maintain the required setbacks as undisturbed vegetated buffers, except for the access road. Access roads are to be constructed in a non-linear manner so as not to provide a direct view corridor to the support structures. The Planning Board/Town Planner may require additional plantings in the buffer area to enhance the quality and effectiveness of the buffer area to serve as a visual screen. The size and quantity of plantings is subject to Planning Board/Town Planner approval.

c. At a WCSF, the design of the buildings and related structures must, to the extent possible, use materials, colors, textures, screenings and landscaping that will blend the facilities to be compatible with the natural setting and built environment. The building and related structures must be planned in a manner to accept equipment of co-locators. Underground utilities must be used to serve the WCSF;

d. Towers may not be artificially lighted.

e. Road access to the telecommunications structure is to be the minimum size necessary to allow safe access.

f. The base of a telecommunications tower may not be located in wetland, floodplain, resource conservation, shoreland and resource protection overlay zones.

g. A security fence to be approved by the Planning Board/Town Planner of not fewer than eight feet in height from the finished grade is to be provided around the tower and painted a neutral color as approved to minimize visual impacts. Access to the tower is to be through a gate that can be secured.

5. Investigation of Existing Alternative Towers, Sites, and Structures. Applicants must identify all existing and proposed towers, including their heights, located in the Town and within two miles beyond Town boundaries. Applicants must provide evidence of the lack of antenna space on all such towers, and identify alternative tower structures and sites, which have been investigated as an alternative to constructing a new tower. Applicant must address the pros and cons of utilizing co-location and other alternative tower structures with respect to their application and demonstrate that they cannot provide adequate communication service utilizing such existing towers or structures.

6. Co-Location. The applicant and owner must allow other future wireless service carriers, and including providing space at no charge to public agencies (including but not limited to police, fire, ambulance, communications and highway if requested at the time of review by the Planning Board), using functionally equivalent personal wireless technology to co-locate antennas, equipment and facilities on a telecommunications tower and site, unless satisfactory evidence is presented and the Planning Board/Town Planner concurs that technical constraints prohibit co-location. Applicant and other wireless service carriers must provide a mechanism for the construction and maintenance of shared facilities and infrastructure and for reasonable sharing of cost in accordance with industry standards. (A reasonable charge for shared use is based on generally accepted accounting principles.

This charge may include, but not be limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return of equity, depreciation and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference, all being pertinent to the Southern Maine Market area.)

To ensure co-location, the Planning Board/Town Planner may require co-location on a tower so as to prevent the need for new carriers to build new towers, may deny an application for a telecommunications facility because of inadequate provisions and/or arrangements for co-location and may require an existing tower to

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

be extended in height (provided that a structural analysis indicates that such extension is structurally feasible and safe) in order to provide for co-location.

### 7. Performance Guarantees and Removal of Abandoned/Unused Facilities.

a. No building permit may be issued until the applicant has filed a performance guarantee and approved by the Town manager equal to one hundred twenty-five (125) percent of the cost of completing the following improvements:

- i. The construction of any drainage systems involving piping, culverts, or retention or detention facilities;
- ii. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this section; and
- iii. Other site improvements required by the Board/Town Planner to meet the standards of this section.

### b. Removal of Abandoned/Unused Facilities.

- i. The owner of a telecommunications facility is required to remove the tower and associated facilities should it not be used for the use or uses approved for a period of ninety (90) consecutive days. This period may be extended by the Planning Board/Town Planner if there are extenuating circumstances beyond the control of the applicant. An applicant for a permit under this Section must post a performance guarantee approved by the Town manager with the Town prior to obtaining a permit that is equal to one hundred twenty-five percent (125%) of the cost of removing the structure. The performance guarantee must be in effect for the life of the WCSF;
- ii. The performance guarantee covering such removal must be reviewed for renewal at a maximum term of five years, to account for cost adjustments. It must contain a mechanism, satisfactory to the Town, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.

8. To ensure compliance with the prescribed ordinances, all approvals will be subject to an annual permit renewal conducted by the Town Planner. The Town Planner at a minimum is to review the continued use of the facility; maintenance of the facility and site improvements; availability for co-location of new service; and review of bonding documents. The documents and permit renewal fee must be submitted to the Town Planner no later than October 1st of each year following the original approval.

## Article XXIV. Exterior Lighting

### 16.8.24.1 General Requirements.

All new or revised exterior lighting, including the replacement or modification of existing lighting fixtures that result in a change in the lighting characteristics of the fixture, must be designed to provide only the minimum lighting necessary to ensure adequate vision, safety, and comfort and may not cause glare beyond the limits of the property boundaries. New and replacement exterior lighting must conform to the current recommended practices of the Illuminating Engineering Society of North America (IESNA) unless more restrictive requirements are established by this Article. Exterior lighting should also be consistent with the Design Handbook. When the lamps or bulbs of existing lighting installations are replaced, the replacements must conform to the requirements of IESNA and this Article to the extent reasonable.



**16.8.24.2 Lighting Fixtures.**

All new or replacement exterior lighting fixtures and installations for multifamily housing and nonresidential uses other than outdoor sports and recreational facilities that are located outside the right-of-way of a public street must meet the following standards:

A. Lighting fixtures mounted on masts or poles must be cut-off fixtures except for period or historical fixtures meeting the provisions of subsection G of this section.

B. Flood lighting or other directional lighting may be used for supplemental illumination of sales or storage areas; provided that the flood lights are installed no higher than twelve (12) feet above ground level, are aimed to avoid the source of the light being seen from adjacent streets or properties, and utilize lamps with an initial lumen rating not exceeding thirty-nine thousand (39,000) lumens. The Town has the right to inspect the completed lighting installation and, if flood lights are used, to require that the flood lights be re-aimed or fitted with face louvers if necessary to control direct brightness or glare.

C. Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of eight thousand five hundred (8,500) lumens or less, wall-mounted building lights must include full face shielding consisting of either a solid panel or full face louvers. Exposed lamps, reflectors or refractors may not be visible from any part of the fixture except the bottom, light emitting surface.

D. Light fixtures located on or within canopies must be recessed into the ceiling of the canopy so that the lamp, reflector, and lens are not visible from public streets. Fixtures must limit the direction of light as required for a "cut-off fixture." Refractors or diffusing panels that are dropped below the canopy ceiling surface are not permitted.

E. Light fixtures must be mounted at the lowest level that allows reasonable compliance with IESNA recommended practices and the provisions of this Article.

1. In approving new or modified lighting, the Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures located between the building and the front lot line of not more than fifteen (15) feet unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of the site exists.

2. The Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures for other areas of the site of not more than twenty (20) feet unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of that area of the site exists.

3. The maximum light fixture height for building-mounted light fixtures is the equivalent of that allowed for a pole-mounted light illuminating the same area. See the Design Handbook for examples of acceptable lighting installations.

F. Lamps in exterior light fixtures must be incandescent, metal halide, high pressure sodium, or light-emitting diode (LED). This provision does not prohibit the use of fluorescent lamps in internally lighted signs where such signs are otherwise permitted, provided such signs meet the requirements of this Article. See the Design Handbook for appropriate examples of signs. With the use of LED lighting the Applicant is required to demonstrate that standards within this article are met and/or meet comparable accepted standards for

LED exterior lighting. Required photometric test reports for LED lighting must be based on the IESNA LM-79-08 test procedure. (Ordained 3/25/13; effective 4/25/13)

G. Period or historical fixtures that do not meet the requirements of this section may be used as an alternative to cut-off fixtures provided the maximum initial lumens generated by each fixture does not exceed two thousand (2,000). The maximum initial lumens for metal halide lamps may be increased to eight thousand five hundred (8,500) if the lamp is internally recessed within the fixture or is shielded by internal louvers or refractors. The mounting height of period or historical fixtures may not exceed twelve (12) feet above the adjacent ground. See the Design Handbook for examples.

H. State and national flags that are flown on flag poles may be illuminated by ground-mounted lighting that shines vertically as long as exposed lamps, reflectors, or refractors are not visible from any public street.

**16.8.24.3 Illumination Standards for Nonresidential Uses and Multifamily Housing.**

New or revised exterior lighting serving nonresidential uses and multifamily housing must conform to the following standards:

A. The illumination of access drives must provide for a uniformity ratio of not more than 4:1 (ratio of average to minimum luminance). The illumination of parking lots and outdoor sales and service areas must provide for a uniformity ratio of not more than 20:1 (ratio of maximum to minimum luminance).

B. The maximum illumination level within access drives, parking lots, and sales and service areas may not exceed eight footcandles measured at the ground surface.

C. The maximum illumination level at the property line of a nonresidential or multifamily housing use with abutting properties in a residential district may not exceed 0.1 footcandle.

D. Areas directly under canopies must be illuminated so that the uniformity ratio (ratio of average to minimum luminance) will be not greater than 3:1 with an average illumination level at ground level of not more than thirty (30) footcandles. Areas of access drives, parking lots, sales display areas, etc., which are adjacent to canopies must taper down in illumination level from the illumination level permitted under the canopy to the maximum illumination level permitted in subsection B of this section for the access drive, parking lot, or sales display area adjacent to the canopy within a horizontal distance equivalent to the height of the canopy.

E. The maximum illumination levels and uniformity ratios for areas other than parking lots, access drives, and canopies must be consistent with IESNA recommended practices and be compatible with the overall lighting of the project and be specifically approved by the Planning Board.

F. Illuminated signs must not produce glare and are otherwise governed by Article XXIV of Chapter 16.8.

**16.8.24.4 Illumination Standards for Outdoor Sports and Recreational Facilities.**

New or revised exterior lighting serving sports fields and outdoor recreational facilities including commercial recreational uses must conform to the following standards:

A. Such fields and facilities may be illuminated for use during daylight hours and until 10:00 p.m. unless the Planning Board specifically approves a later time based upon the applicant demonstrating that such later time is needed for the reasonable operation of the facility and will be compatible with and will not result in adverse impacts on neighboring properties. If a later hour is approved, the Planning Board may impose

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

conditions on the approval including provisions for the periodic review of the time limit.

B. The illumination levels and mounting heights of the lighting fixtures may not exceed the minimum necessary to provide reasonable illumination for the proposed use consistent with IESNA recommended practices.

C. The maximum illumination level at the property line of the use with abutting properties in a residential district may not exceed 0.1 footcandle.

### **16.8.24.5 Illumination Standards for Single- and Two-family Residential Uses.**

New or revised exterior lighting serving single and two-family residential uses must be located and designed so that it does not result in excessive illumination levels on adjoining properties such as to amount to a public or private nuisance, and must be compatible with the zone requirements in the neighborhood in which it is located. A maximum illumination level at the property line of more than 0.1 footcandle is considered to be excessive if the lighting level is in dispute. In the case of a major home occupation, the application must include a lighting plan meeting the requirements of Section 16.10.7.2H.1.

## **Article XXV. Accessory Dwelling Units**

### **16.8.25.1 Purpose.**

It is the intent of this Article to impose standards that enable homeowners to create accessory dwelling units that are compatible with this Code and do not negatively impact the character of the existing neighborhood or overburden the existing infrastructure.

### **16.8.25.2 Applicability.**

An Accessory Dwelling unit is allowed in all zoning districts where the use is permitted in Chapter 16.3. The unit must be located in an existing structure with a certificate of occupancy issued more than 5 years prior to the date of the ADU application, on the property where the owner of the property occupies one of the units. The accessory dwelling unit may be attached to, or detached from, the primary dwelling unit. No expansion of a building's footprint is allowed to accommodate an accessory dwelling unit.

(Ordained 9/26/11; effective 10/27/11)

### **16.8.25.3 Application for an Accessory Dwelling Unit.**

A. An application for an accessory dwelling unit must be made by the owner of the parcel on which the primary residential unit sits. The completed application and associated fees must be submitted to the Town Planner and Code Enforcement Officer for review.

B. Applications for an accessory dwelling unit that meets the unit size standards and development standards contained in this Article may be approved administratively, and require approval by both the Town Planner and Code Enforcement Officer.

C. An accessory dwelling unit that fails to meet the unit size standards and or the development standards provided in this Article may not receive administrative approval; however the accessory dwelling unit may still be allowed. See Sections 16.8.25.4.1 and 16.8.24.4.2, below.

D. The Town limits the number of new accessory dwelling unit permits to no more than twenty-two in the remainder of the calendar year of implementation and no more than 10 per calendar year on a first-come

first-served basis.

E. One of the units on the property, either primary or secondary, must be occupied by the property owner at all times during the period of permitting. Prior to the issuance of a certificate of occupancy, the property owner must submit a recorded copy of deed restrictions to the Town Planner outlining the owner-occupancy requirement.

#### **16.8.25.4 Accessory Dwelling Unit Standards.**

##### **16.8.25.4.1 Lot Standards.**

A. Legal Lot/Residence. An accessory dwelling unit is allowed only on lots within the Town that contain a legal, single-family residence as the primary unit.

B. Number of Accessory Dwelling Units Per Lot. No more than one (1) accessory dwelling unit is permitted on a lot.

C. Zone Lot Size and Unit Density. The property on which an accessory dwelling unit is located must meet the size required by a zone's standards. However, an accessory dwelling unit is exempt from the density requirement of such zone.

D. Utility Connections. Accessory dwelling units must be connected to adequate water and sewer services.

##### **1. Public Sewer:**

a. Service: Verification in writing of adequate service to support the additional flow from the Superintendent of Wastewater Treatment Facilities.

b. Fees: Payment of appropriate fees for connection to the municipal sewer system is required prior to obtaining the certificate of occupancy.

(Ordained 9/26/11; effective 10/27/11)

2. Septic Systems: Verification of adequate sewage disposal for subsurface waste disposal is required. The septic system, existing or proposed, must be verified as adequate or reconstructed as required. Plans for subsurface waste disposal must be prepared by a Maine licensed site evaluator in full compliance with the State of Maine Subsurface Wastewater Disposal Rules.

3. Public Water: Verification in writing is required from the Kittery Water District for volume and supply.

4. Wells: Verification of the potable water supply for private wells is required. Tests of the existing well or proposed well, if applicable, must indicate that the water supply is potable and acceptable for domestic use, and must conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies, Public Health Service No 1180 (1969)".

F. Private Road or Right of Way Access. Where an applicant seeks to locate an accessory dwelling unit on a privately maintained road or right of way the following applies;

1. Applicant must provide written consent from the association or parties responsible for street maintenance; and

2. Road construction standards must support the additional trips generated.

**16.8.25.4.2 Unit Standards.**

A. Unit Size. The habitable floor space of an accessory dwelling unit must be a minimum of four hundred (400) square feet and no larger than eight hundred (800) square feet.

B. Unit location. An accessory dwelling unit:

1. Must be fully constructed within the existing footprint of any legal primary residence or accessory building.
2. Will be allowed inside of the primary residence building where the building has non-conforming yard setbacks.
3. Will not be allowed in accessory or detached buildings encroaching on yard setbacks.

C. Building Code Compliance. An accessory dwelling unit must satisfy the requirements contained in the building code and fire code as currently adopted by the Town. See Section 16.5.2.2, Conformance to Standards.

**16.8.25.5 Development Standards.**

Should an accessory dwelling unit fail to meet the development standards listed in this Article, the accessory dwelling unit may still be allowed if the applicant obtains approval from the Board of Appeals under the provisions of a Miscellaneous Variation Request.

**Article XXVI Campgrounds and Campsites**

**16.8.26.1 Campgrounds and Campsites.**

A. Campgrounds. Campgrounds must meet the minimum requirements according to State licensing procedures and the following:

1. Campgrounds must contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site.
2. Land supporting wetland vegetation, and land below the normal high water line of a water body is not to be included in calculating land area per site.
3. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings must be set back a minimum of seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

B. Individual private campsites. Individual, private campsites not associated with campgrounds may be permitted in a Shoreland Overlay Zone provided the following conditions are met:

1. One campsite per lot existing on the effective date of this chapter, or thirty thousand (30,000) square feet of lot area within the SL-OZ, whichever is less, may be permitted;
2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, must be set back seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

3. Only one recreational vehicle is allowed on a campsite. Permanent foundations for recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle parking are permissible. No structures, other than canopies are allowed for attachment to the recreational vehicle.
4. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection Overlay Zone is limited to one thousand (1000) square feet.
5. A written sewage disposal plan describing the proposed method and location of sewage disposal is required for each campsite and must be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or property owner is required.
6. Recreational vehicles, tents or similar shelters are not allowed to remain on-site for a period longer than one hundred and twenty (120) days per year, unless it can be demonstrated that all requirements for residential structures have been met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules and/or the site is served by public sewage facilities.

### **Article XXVII. Essential Services**

#### **16.8.27.1. Installation.**

- A. Where feasible, the installation of essential services will be limited to existing public ways and existing service corridors.
- B. The installation of essential services is not permitted in a Conservation Zone or Resource Protection Overlay Zone, except to provide services to a permitted use within said zone, or except where the applicant demonstrates no reasonable alternative exists. Where permitted, such structures and facilities must be located to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- C. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

### **Article XXVIII. Single and Duplex Family Dwellings**

#### **16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay Zones.**

In addition to the criteria specified in Section 16.6.6 and 17.10.8.3.4, applicable to the granting of a special exception use request, the Planning Board may approve an application for a single or duplex family dwelling special exception use request, where applicable, provided the applicant demonstrates all of the following conditions are met:

- A. There is no location on the property, other than a location within the Shoreland Overlay or Resource Protection Overlay Zones, where the structure can be built.
- B. The lot on which the structure is proposed is undeveloped and was established and recorded in the York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

C. All proposed buildings, sewage disposal systems, other than municipal sewer, and other improvements are located:

1. on natural ground slopes of less than 20%,
2. outside the floodway of the 100-year flood-plain along rivers, and
3. outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.

D. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils

E. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be  $\frac{1}{2}$  the width of the 100-year flood-plain.

F. The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of fifteen hundred (1,500) square feet. This limitation may not be altered by variance.

G. All structures, except functionally water-dependent structures, are set back from the normal high water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than seventy five (75) feet, horizontal distance. In determining the greatest practical extent, the Planning Board must consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to the wetlands.

## **Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT**

### **Article I. General**

#### **16.9.1.1 Agriculture.**

A. Agricultural practices must be conducted to minimize soil erosion, sedimentation, contamination, and nutrient enrichment of ground and surface waters.

B. All spreading or disposal of manure must be accomplished in conformance with the Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of Agriculture and the Nutrient Management Law (7 M.R.S. §4201-4209).

C. Manure must not be stored or stockpiled within one hundred (100) feet, horizontal distance, of the normal high-water line of any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on the Map. Within five (5) years of the effective date of this chapter all manure storage areas within the Shoreland Overlay and Resource Protection Overlay Zones must be constructed or modified so the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five-year period.

D. Owners of agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the Shoreland Overlay Zone are required to submit a soil and water conservation plan to the Planning Board for review and approval. Nonconformance with the provisions of said approved plan will be considered to be a violation of this section.

E. New tilling of soil within one hundred (100) feet, horizontal distance, of the normal high-water line of water bodies or coastal wetlands, within twenty-five (25) feet, horizontal distance of the normal high water line of tributary streams, and freshwater wetlands shown on the Map, is prohibited. Operations in existence on the effective date of this chapter and not in conformance with this provision may be maintained.

F. After the effective date of this section, newly-established livestock grazing areas will not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of any water bodies, or coastal wetlands or, within twenty-five (25) feet, horizontal distance, of the normal high-water line of tributary streams, and freshwater wetlands shown on the Zoning Map. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provision may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan that has been approved by the Planning Board.

#### **16.9.1.2 Mineral/Earth Material Exploration and Removal.**

A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this Code, only after a special permit for such operations has been issued by the Code Enforcement Officer upon approval and review of plans by the Planning Board in accordance with the provisions of this Code, and provided that nothing herein may be deemed to apply to normal excavation operations incidental to construction activities for which a valid permit is held. The following standards must be met:



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. The applicant must submit to the Code Enforcement Officer plans of the proposed extraction site showing the property lines and names of all abutting owners and ways, indicating by not greater than five-foot contour intervals related to U. S. Geodetic Survey data, the location and slope of the grades existing and as proposed upon completion of the extraction operation, proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits, together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.

2. Said plans and statement are to be promptly submitted with the recommendations of the Code Enforcement Officer to the Planning Board for its consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the Town, upon existing or approved land uses which might be affected by the operations. The Planning Board may recommend changes to the applicant for resubmission to the Planning Board. The Planning Board is to promptly call and hold a public hearing upon the final application in the same manner as provided for any final plan review.

3. The Planning Board shall render a written decision as to whether, and under what conditions, the proposed operation may be permitted consistent with public health and safety, the preservation of attractive natural features, compatibility, despite temporary and reasonable disturbance, with existing or approved land uses which might be affected, and implementation of the comprehensive plan. If the Planning Board approves the application, it may condition the special permit upon such alterations in the proposed operation or upon the performance or omission of such acts, as it may deem proper to assure attainment of the objectives set forth in the preceding sentence, and it may require filing of a performance guaranty in an amount and form acceptable to the Town manager to indemnify the Town against any claims arising from the proposed operations, and to assure satisfactory performance of all conditions imposed or otherwise applicable.

B. **Mandatory Restrictions.** All extraction operations and sites within the Town must be conducted and maintained in accordance with, and the Planning Board shall impose, such conditions upon any special permit issued under this subsection as they deem necessary or desirable to assure compliance with, the following requirements:

1. Mineral exploration to determine the nature or extent of mineral resources must be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer is required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes must immediately be capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

2. Mineral extraction, including sand and gravel extraction, is prohibited within the Conservation, Shoreland Overlay and Resource Protection Overlay Zones.

3. No part of any extraction operation may be permitted within one hundred (100) feet of any property or street line, and natural vegetation must be left and maintained on the undisturbed land. Minimize the volume of earth cut and fill, in general with no cut or fill greater than seven feet for construction in an urban residential zone. Topographical change will not result in cuts or fills exceeding seven feet.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

4. No standing water may be permitted in any extraction site during or after extraction operations, except that during or after extraction operations standing water may be permitted under strict conditions with respect to fencing, safe levels of coliform bacteria count, and treatment to prevent breeding of insects so as to assure the public health and safety as determined by the Town health officer.
5. No slopes steeper than three feet horizontal to one foot vertical may be permitted at any extraction site unless a fence at least three feet high is erected to limit access to such locations.
6. Before commencing removal of any earth materials, the owner or operator of the extraction site must present evidence to the Planning Board of insurance against liability arising from the proposed extraction operations, and maintain such insurance throughout the period of operation.
7. Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required for restoration, be stripped from the locations of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased.
8. Upon completion of active extraction operations, the land must be left so that natural storm drainage and watercourses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not significantly increased.
9. The hours of operation at any extraction site are to be limited as the Planning Board deems advisable to ensure operational compatibility with residents of the Town.
10. Loaded vehicles must be suitably covered to prevent dust and contents from spilling or blowing from the load, and all trucking routes and methods are subject to approval by the Chief of Police.
11. All access roads leading from the extraction site to public ways must be treated with stone, calcium or other suitable materials to reduce dust and mud for a distance of at least one hundred (100) feet from such public ways.
12. No equipment, debris, junk or other material is permitted at an extraction site except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith must be removed within thirty (30) days following completion of active extraction operations.
13. Following the completion of extraction operations at any extraction site or at any one or more locations within any extraction site, ground levels and grades must be established in accordance with the approved plans filed with the Planning Board; all debris, stumps, boulders and similar materials must be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil. Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they must be revegetated and properly restored to a stable condition adequate to meet the provisions of the "Maine Erosion & Sediment Control BMPs," March 2003.

C. Issuance and Renewal of Permits. Special permits may be issued in accordance with the foregoing provisions for a period not to exceed one year, and they are renewable only upon application by the owner, after a finding by the Planning Board that the conduct of the operation has been substantially in accordance with any and all conditions imposed or material representations made in connection with the original special permit; and upon such additional and altered conditions as the Board may deem necessary in accordance with subsection (A)(3) of this section.

### **16.9.1.3 Prevention of Erosion.**

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

A. No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations complying with the standards of performance specified elsewhere in this Code.

B. All development must generally comply with the provisions of the “Environmental Quality Handbook Erosion and Sediment Control” published by the Maine Soil and Water Conservation Commission. Special consideration will be given to the following:

1. Select a site with the right soil properties, including natural drainage and topography, for the intended use;
2. Utilize for open space uses those areas with soil unsuitable for construction;
3. Preserve trees and other vegetation wherever possible;
4. Hold lot grading to a minimum by fitting the development to the natural contour of the land, avoid substantial areas of excessive grade;
5. Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;
6. Construct sediment basins to trap sediment from runoff waters during development. Expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;
7. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;
8. Plant permanent, and where applicable indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;
9. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of “Permanent Logging Roads for Better Woodlot Management,” published by the U.S. Department of Agriculture.

C. Where the Board has required a stormwater management and erosion control plan, said plan shall be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town’s Engineering peer reviewer.

(Ordained 9/26/11; effective 10/27/11)

D. All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the “Maine Erosion & Sediment Control Best Management Practices (BMPs)”, March 2003. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:

1. mulching and re-vegetation of disturbed soil;
2. temporary runoff control features such as hay bales, silt fencing or diversion ditches;
3. permanent stabilization structures such as retaining walls or riprap.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

E. To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.

F. Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance, and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.

G. Any exposed ground area must be temporarily or permanently stabilized in accordance with the “Maine Erosion & Sediment Control Best Management Practices (BMPs)”, March 2003.

H. Natural and man-made drainage ways and drainage outlets must be protected from erosion from water flowing through them. Drainage ways must be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and be stabilized with vegetation or lined with riprap.

### **16.9.1.4 Soil Suitability.**

A. The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this Code must be met.

B. Any proposed subdivision requires a soil survey covering the development. Where the soil survey for York County shows soils with severe restrictions for development, a Class A high intensity soils report by an accredited soils scientist, registered in the state of Maine, using the standards of high intensity soil mapping as established by the Society of Soil Scientists of Northern New England must be provided.

C. Lot size determination is as follows:

1. Areas containing hydric soil may be used to fulfill twenty-five (25) percent of the minimum lot size required by this Code, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all buildings and required utilities such as sewage disposal and water supply (including primary and reserve leach field locations within required zoning setbacks).

2. Lots served by municipal water and sewer may use areas of poorly drained soil to fulfill up to fifty (50) percent of the minimum required lot size.

3. No areas of surface water, wetlands, right-of-way, or easement, including utility easements or areas designated as very poorly drained soil may be used to satisfy minimum lot sizes, except as noted above.

D. If the soil classification is challenged by the applicant, an abutter, a landowner, the CEO, or the Conservation Commission, petition must be made in writing to the Planning Board. With such petition, or a challenge by the Board, the Planning Board shall determine whether a qualified soil scientist should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in written form to the Planning Board, which evidence forms the basis for the Board's decision.

E. All land uses must be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, require a soils report based on an on-site investigation and must be prepared by state-certified professionals. Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine certified geologists and other persons who have training and experience in the recognition

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

and evaluation of soil properties. The report must be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report must include recommendations for a proposed use to counteract soil limitations where any exist.

### **16.9.1.5 Water Quality and Wastewater Pollution.**

A. No activity is allowed to deposit on or into the ground or discharge to any river; stream or brook; pond or lake; or wetland any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body.

B. Wastewater to be discharged into Kittery sewer department sewers, should they be available, must be in such quantities and/or of such quality as to be compatible with standards established by the municipality or sewer department.

C. To meet those standards, the municipality or sewer department may require that such wastes undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.

D. The disposal of wastewater by means other than a public system must comply with the laws of the state of Maine and the Town concerning water pollution. Where a public sanitary sewer system is located within two hundred (200) feet of the property line as measured along a public way, the Town requires individual entrance into said sewer.

E. Discharge of sanitary wastes to any water body is subject to the issuance of Maine State Department of Environmental Protection licenses, but no such off-site discharge will be allowed unless same is buried or not visible to a point below normal low water, and is secured against damage and uncovering by the tides, erosion or other foreseeable action.

### **16.9.1.6 Air pollution.**

All air pollution control shall comply with the minimum state requirements, and detailed plans shall be submitted to the state of Maine Department of Environmental Protection for approval, before a building/regulated activity permit is granted. In any case, no objectionable odor, dust or smoke shall be detectable beyond the property line.

### **16.9.1.7 Buffer areas.**

Any nonresidential yard setback space abutting an existing or potential residential area shall be maintained as a buffer strip by the developer. Such buffer area shall be for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Kittery.

### **16.9.1.8 Floodplain areas.**

Land along rivers, streams and ponds which is subject to flooding through storm or seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural or outdoor recreational use. The code enforcement officer shall maintain a map showing the latest updated federal and state information of the known floodplain areas, and no building shall be constructed herein when there are undue flooding hazards, unless it can meet all requirements of Chapter 16.9 Article VIII. Floodplain Management, relating to flood hazard permit and review procedure of this code. Floodplain areas shall be considered as those areas within the one hundred (100) year frequency floodplain, as identified by an authorized federal or state agency or

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

where such identification is not available, are located on floodplain soils identified as described in the York County Soil Survey to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl. (Ordained 9/26/11; effective 10/27/11)

### 16.9.1.9 Noise abatement.

A. Excessive noise at unreasonable hours shall be controlled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.

B. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this title shall be as established by the time period and type of land use district listed below. Sound pressure levels shall be measured at all major lot lines, at a height of at least four feet above the ground surface. Sound from any source controlled by this title shall not exceed the following limits at the property line of the “receiver” premises.

Sound Pressure Level Limit Measured in dBs		
	7 a.m. to 9 p.m.	9 p.m. to 7 a.m.
Industrial Districts	65	60
Commercial and Business Districts	60	50
Residential Districts, Kittery Foreside District, Badgers Island District, Rural Conservation and Resource Protection Districts	55	45

1. Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.
2. The levels specified may be exceeded by ten (10) dB for a single period, no longer than fifteen (15) minutes in any one day.

C. Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1961 “American Standard Specification for General Purpose Sound Level Meters”). The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962 “American Standard Meter for the Physical Measurements of Sound.”

D. No person shall engage in, cause or permit to be engaged in construction activities producing excessive noise on a site abutting any residential use between the hours of nine p.m. on one day and seven a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for commercial districts for the periods within which construction is to be completed pursuant to any applicable building/regulated activity permit.

E. The following uses and activities shall be exempt from the sound pressure level regulations:

1. Home maintenance activities (i.e., mowing lawns, cutting one's own firewood, etc.) between the hours of seven a.m. and nine p.m.;
2. Timber harvesting (felling trees and removing logs from the woods);
3. Noise created by construction and maintenance activities between seven a.m. and nine p.m.;
4. The noises of safety signals, warning devices and emergency pressure relief valves and any other public emergency activity;
5. Traffic noise on existing public roads, railways or airports.

F. These noise regulations are enforceable by law enforcement officers and by the code enforcement officer (who may measure noise levels, and who shall report documented violations to the police). For the purposes of enforcement, sounds exceeding the above limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A, M.R.S. §501 ("Offenses Against Public Order, Disorderly Conduct").

**16.9.1.10 Radiation.**

No dangerous radiation shall be detectable at the property line, in accordance with the applicable state and federal laws. In the case of electromagnetic pulses emanating from electrical service components, the board shall require the developer to adopt a "prudent avoidance" approach, wherever possible. (

**Article II. Retention of Open Spaces and Natural or Historic Features**

**16.9.2.1 Tree clearing.**

Proposed development plans must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plans.

**16.9.2.2 Clearing or Removal of Vegetation for Uses Other Than Timber Harvesting in a Resource Protection or Shoreland Overlay Zone.**

A. In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in a Resource Protection or Shoreland Overlay Zone the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.

B. Except in areas as described in Article II of Chapter 16.9 above and one hundred (100) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. Clearance of an opening greater than two hundred and fifty (250) square feet in the forest canopy, or other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown is prohibited. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created
2. Selective cutting of trees within the buffer strip is allowed provided a well-distributed stand of trees and other natural vegetation is maintained. Adjacent to water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

<b>Diameter of Tree at 4- ½ feet Above Ground Level (inches)</b>	<b>Points</b>
2 - < 4 in.	1
4 – <8 in.	2
8-< 12 in.	4
12 in. or greater	8

The following governs in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Code;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Code;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

3. For the purposes of Section 16.9.2.2B.2 "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter may be removed until 5 saplings have been recruited into the plot.

4. Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4½ feet above ground level may be removed in any ten (10) year period.

a. To protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, must remain uncut, uncovered, or undisturbed, except to provide for a footpath or other permitted uses as described in Section 16.9.2.2B.2 above.



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- b. Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- c. To maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings must be replanted with tree species that are suitable to Kittery's growing conditions unless existing new tree growth is present. See Design Handbook Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages 13 and 14 for the listing of approved plant materials.
- d. Article II of Chapter 16.9 does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.
- C. At distances greater than one hundred (100) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a coastal wetland, and one hundred (100) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses must be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.
- D. It is not permissible to clear openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding in the aggregate, 25 percent of the lot area within the Resource Protection or Shoreland Overlay Zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision does not apply to the Commercial Fisheries/Maritime Activities zones.
- E. Legally existing nonconforming cleared openings may be maintained, but must not be enlarged, except as allowed by this Code.
- F. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation will be regulated under the provisions of Chapter 16.9.

### **16.9.2.3 Land Dedication.**

Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.

### **16.9.2.4 Landscape Plan for Preservation of Natural and Historic Features.**

- A. The applicant is required to submit a proposed development design plan(s) that includes a landscape plan showing:
  - 1. Preservation of existing trees ten (10) inches or more, caliper at breast height;
  - 2. Replacement of trees and vegetation;
  - 3. Graded contours;
  - 4. Streams, wetlands and water bodies; and
  - 5. Preservation of scenic, historic or environmentally significant areas.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

B. Cutting of trees on the northerly borders of lots should be avoided as far as possible, to provide a natural wind buffer.

C. Unless the applicant can demonstrate it is impracticable, street and lot layout must be adapted to the topography. Extensive grading and filling must be avoided as much as possible.

### **16.9.2.5 Archaeological or Historic Sites.**

A. When the proposed development contains any identified archaeological or historic sites, or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas must be included in a development plan's open space, and suitably protected by appropriate covenants and management plans.

B. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, must be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least twenty (20) days prior to action being taken by Town Planner and or the Planning Board. The development review authority will consider comments received from the Commission prior to rendering a decision on the application.

C. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay Zones, a permit is not required for an archaeological excavation provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

## **Article III. Conservation of Wetlands Including Vernal Pools**

### **16.9.3.1 Purpose.**

A. Wetlands are a fragile natural resource which, in their natural state, directly and indirectly benefit the public by serving valuable functions such as pollution filtration systems (i.e., retention of suspended solids, phosphorus and other nutrients), control of flood waters, erosion control, groundwater recharge, educational and scientific study, wildlife habitat, open space, and recreation. Considerable wetland acreage has been lost or impaired by draining, dredging, filling, excavating, building, pollution, and other acts inconsistent with the valuable functions and natural limitations of wetlands. It is therefore the intent of the Town to:

1. Prevent the development of structures and land uses within wetlands and wetland setback areas that may contribute to the pollution of surface and groundwater by sewage or toxic substances;
2. Prevent the destruction of, or significant changes to, wetlands which provide flood and shoreline protection, recharge groundwater supplies, and augment stream flow during dry periods;
3. Protect wetland areas and promote healthy wetland buffers that will preserve and enhance the wetlands;
4. Protect wildlife habitats, such as vernal pools, deer habitat, nesting sites, etc. and maintain ecological balances;
5. Establish maintenance responsibility and/or fees to protect and maintain the wetland areas.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

B. The number of healthy, functional wetlands in Kittery is decreasing; therefore practices and strategies, such as buffering and the avoidance of wetland alterations that serve to protect functional wetlands, and the repair of degraded wetlands, are encouraged. The reviewing authority, will review plans for proposed development within 100 feet of a wetland to determine if wetlands of special significance are impacted. The applicant may be required to pay the cost of an independent study. For the reviewing authorities refer to Article III of Chapter 16.10.

C. Wetlands of special significance have one or more of the following characteristics:

1. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled as defined by the Maine Natural Areas Program.
2. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S. §480-B(10).
3. Location near coastal wetland. The freshwater wetland is located within 250 feet of a coastal wetland.
4. Location near a water body. The freshwater wetland is located within 250 feet of the normal high water line, and within the same watershed, of a lake or pond.
5. Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains, under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation, or open water, unless the 20,000 or more square foot area is the result of an artificial pond or impoundment.
6. Wetlands subject to flooding. The freshwater wetland is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.
7. Peatlands. The freshwater wetland is or contains peatlands, except that the Planning Board may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.
8. River, stream or brook. The freshwater wetland is located within 25 feet of a river, stream or brook.
9. Monetary Value. An estimation can be determined based on the importance of the wetland with respect to the individual or collective functions it provides.
10. Vernal Pools. The wetland contains a particular aquatic habitat as defined by Maine Department of Environmental Protection (MDEP) including those mapped as significant vernal pools by MDEP.

### **16.9.3.2 Wetlands Boundaries.**

The definition of wetland boundaries is as described in this Section and in Section 16.2.2. Planning Board approval to alter a wetland area one acre or larger in size will not be issued until the applicant has submitted to the Town a wetlands delineation map and summary prepared by a qualified wetlands scientist or a Maine certified soil scientist, at the applicant's expense. The qualified wetlands scientist or Maine certified soil scientist must determine through field investigation the presence, location and configuration of wetlands on the area proposed for use.

A. Disturbed Areas. An area which has been disturbed or modified such that natural vegetation, hydrology or soils are altered or removed may still satisfy the wetland criteria. In the event disturbance of a wetland causes the wetland boundary to be altered, a new boundary may need to be delineated in order to determine

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

if the wetland is a regulated wetland. Wetland boundaries are to be delineated according to procedures described in the Corps of Engineers Wetlands Delineation Manual - Waterways Experiment Station Technical Report Y-87-1, January 1987”, (1987 Manual). Notwithstanding the above, areas legally disturbed or modified prior to May 13, 1987 will be considered “wetlands” for the purpose of this Code if such disturbed areas currently meet the normal criteria for delineating undisturbed wetlands.

B. Settling Disputes Over Wetland Boundaries. If there is a dispute regarding the existence or boundaries of the wetlands, the boundaries of the wetland are to be determined, at the expense of the applicant, by a qualified wetlands scientist or a qualified Maine certified soils scientist agreeable to both the Planning Board and the applicant.

C. Permits Required from Other Agencies. The determination of wetlands boundaries for Town jurisdiction by the Town Planning Board, the Conservation Commission, or the Code Enforcement Officer does not eliminate the need for the applicant to seek jurisdictional determinations and/or permits from the Maine Department of Environmental Protection and the US Army Corps of Engineers when required.

### **16.9.3.3 Regulated Activities Within Wetlands.**

Unless otherwise specified, all new structures and activities within wetlands, including but not limited to dredging and filling, and expansions of existing structures and activities are subject to the provisions of these regulations. Proposed activities and structures, within a freshwater wetland smaller than five hundred and one (501) square feet in total size, are exempt from the regulations in this Article.

(Ordained 9/26/11; effective 10/27/11)

### **16.9.3.4 Permitted Activities Within Regulated Wetlands.**

The following uses are considered to be compatible within regulated wetlands and are permitted within regulated wetlands without Planning Board approval provided they are in conformance with all local, federal, and state regulations:

(Ordained 9/26/11; effective 10/27/11)

A. Agriculture, including pasturing, farming, haying, and harvesting of wild crops. Such agriculture must not cause or contribute to surface or groundwater pollution by use of pesticides, toxic chemicals or other pollutants, and must not cause soil erosion;

B. Conservation areas and nature trails;

C. Education and scientific research;

D. Forestry, tree farming and timber harvesting using the Best Management Practices in order to protect streams from damage and prevent sedimentation. Timber harvesting must be conducted during periods when the ground is frozen. The practice known as “clear cutting” is not permitted by right and requires a special permit under Section 16.9.5.1;

E. Low intensity recreation;

F. Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks or utilities. Such repair and maintenance must not negatively impact the wetland, or alter the existing watercourse and related hydrology. ;

G. Repair and maintenance of existing permanent structures requiring the addition or removal of ten (10) cubic yards or less of earth material to (from) a water body or wetland;

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- H. Placement of drainage outfall pipes requiring the addition or removal of less than ten (10) cubic yards of material;
- I. Repair in kind, maintenance and necessary upgrade of existing drainage facilities;
- J. Repair in kind and maintenance of existing transportation facilities;
- K. Placement of moorings, subject to harbor master approval;
- L. Wilderness areas and natural wildlife refuges;
- M. Piers, fences, blinds, footbridges, and shelters to enhance wildlife provided they do not involve draining, grading, filling or dredging within the wetland. All such structures must be constructed of nontoxic materials and designed in such a manner to permit the unobstructed flow of waters and must preserve the natural contour and hydrology of the wetland, unless otherwise authorized by special permit as per Section 16.9.3.4;
- N. Emergency public safety operations;
- O. Any other activity as determined by the Planning Board that does not result in a measurable alteration of the wetland.

### **16.9.3.5 Prohibited Uses Within Regulated Wetlands.**

The following structures and activities are considered to be incompatible with protecting wetlands and are prohibited within regulated wetlands:

1. Disposal or storage of waste and/or hazardous materials;
2. Manure stockpiles;
3. Road salt stockpiles;
4. Topsoil removal except as permitted in Section 16.9.3.4 or with Planning Board approval;
5. Bulk fuel storage;
6. Herbicidal spraying;
7. Invasive non-native wetland plants; and
8. Snow dumping.

### **16.9.3.6 Procedures for the Wetlands Alteration Application.**

A. Application and Review Process. The application and review process for the review of proposals within regulated wetlands must conform to the procedures explained in Article III Chapter 16.9, except where specifically stated otherwise in this Section.

B. Submission Requirements. An application to alter a wetland must be made in accordance with the submission requirements in Section 16.9.3.12 to the Town Planner, or designee, accompanied by a fee as determined in Appendix A.

(Ordained 9/26/11; effective 10/27/11)

C. Advisory Opinion. The Planning Board may request the Town Planner to acquire more specific data and analysis from qualified sources and/or the opinion of the Conservation Commission concerning the proposed activity.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

D. **Timing After Board Acceptance.** The Planning Board will issue its decision within thirty-five (35) days of receipt of the completed wetlands alteration application, unless a public hearing is necessary. A hearing is not necessary if the Planning Board finds that the activity is so minor that it will not significantly affect the wetland, or that the hearing will not produce additional information useful to the review. A decision may be rendered at the scheduling hearing if the Board determines that a complete application has been received and no public hearing is necessary. If a public hearing is held, the Planning Board is required to issue its decision within thirty-five (35) days of completion of the public hearing.

E. **Abutter Notice.** Owners of property within one hundred fifty (150) feet, horizontal distance, of the proposed alteration must be notified by first class U.S. mail of any public hearing on the application for wetlands alteration.

F. **Coordination.** Submission requirements for an application for a wetlands alteration will be integrated into the required submissions for a subdivision or development review application to the Planning Board.

### **16.9.3.7 Wetlands Alteration Approval Criteria.**

A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.

B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland. The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.

C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.

D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).

E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the Board will consider the following:

The proposed use:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;<sup>2</sup>
2. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
3. Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and
4. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.

F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives:

The proposed use will not:

1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;
2. Unreasonably increase the flow of surface waters through the wetland;
3. Result in a measurable increase in the discharge of surface waters from the wetland;
4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;
5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;
6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.
7. Result in a measurable alteration or destruction of a vernal pool.

### **16.9.3.8 Expiration of Wetlands Alteration Approval.**

If work on the development has not commenced within one year or is not substantially complete within two years of the approval date, the approval for work in the wetlands will expire. The Board may, by formal action, grant extensions to the approval provided the request is submitted to the Board prior to the expiration of approval.

### **16.9.3.9 Mitigation Plan.**

A. Mitigation activities are actions taken to offset potential adverse environmental impact, as well as the remittance of fees and a plan for the preservation of buildable/useable upland areas when the applicant has proven to the Planning Board's satisfaction that there are no practical alternatives to impacting a wetland.

B. Required Fees and Compensation.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. For activities which in total will alter or fill less than five hundred and one (501) square feet of regulated wetlands, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered.

2. For activities which in total alter or fill a five hundred and one (501) square foot to twenty thousand (20,000) square foot wetland, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The undisturbed buffer zone from the wetland boundary must be placed in deed restrictions and be located and configured in a manner acceptable to the Planning Board.

3. In addition, a Wetlands Preservation Fee for each square foot of altered wetland area, as determined in Appendix A, Wetlands Preservation will be deposited into the account of the Town to achieve one or more the following objectives related to the conservation of Kittery wetlands, with the Planning Board's recommendation and release of funds by the Town Council:

(Ordained 9/26/11; effective 10/27/11)

- a. Restoration and preservation of wetlands;
  - b. Purchase of buffer areas for wetlands deemed at risk;
  - c. Monitoring and improvement of water quality;
  - d. Environmental and conservation projects such as, but not limited to, education;
  - e. Matching grant funds;
  - f. Open space land purchases in conjunction with the Open Space Committee;
  - g. Assistance to the Kittery Land Trust;
  - h. Purchase of signage to denote sensitive and wetland areas.
4. Assessment. A functional assessment and report of the wetlands to be altered must be conducted in accordance with the requirements in Section 16.9.3.12C. The assessment must demonstrate the existing wetland functions and functional value, and summarize the impairments, degradation, and/or loss of function due to the proposed development.
- a. When Required. Fees for deposit to the wetlands preservation account are required whenever wetland areas or wetland functions will be lost or degraded due to the project, as identified by the functional assessment.
  - b. Where Required. Fees for deposit to the wetlands preservation account must be used on the proposed site or on parcels adjacent to the project site when possible. If not possible, the fees must be used within the same watershed as the proposed alteration, or within the project vicinity, except as allowed for mitigation banking approved in writing by the Maine Department of Environmental Protection. In all cases, use of the fees must occur within the boundaries of the Town.
  - c. Wetland Impact Mitigation Process. Fees or developable land or a combination thereof as determined by the Planning Board will be used to replace lost wetlands and wetland functions. Where the Maine Department of Environmental Protection and this Code require and the Planning Board has approved a mitigation plan, such plan is deemed to satisfy Town standards.



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

5. Homeowner Association documents, deed covenants, maintenance agreements, and easements must establish responsibility for the maintenance of wetlands. The Association documents must stipulate periodic maintenance of the surface and sub-surface stormwater system including but not limited to catch basins, stormwater manholes, pipes, ditches, curbs, settling basins and other structures designed to direct, retain and or discharge stormwater runoff. In the event the Code Enforcement Officer and /or the Town's engineer finds the wetlands are not in a natural healthy state, the Association will be required to hire a qualified wetlands scientist or a Maine Certified Soils Scientists to evaluate all wetlands within the development at the Association's expense.

### **16.9.3.10 Coordination.**

To reduce delays, the applicant may upon written notice to the Town Planner, simultaneously apply to the Army Corps of Engineers and the Maine Department of Environmental Protection for permits during the Town review process. In addition, the applicant may simultaneously apply for other local land use regulation approvals while applying for wetlands alteration approval.

### **16.9.3.11 Enforcement.**

The provisions of this Article III, Conservation of Wetlands Including Vernal Pools, are to be administered and enforced pursuant to the provisions of Chapter 16.4, Administration and Enforcement.

### **16.9.3.12 Submission Requirements for a Wetland Alteration Application.**

A. Minimum requirements. Unless specifically waived by the Planning Board, all applications must contain the following information:

1. Fifteen (15) copies of the narrative, the site plan and the vicinity map required in this subsection;
2. A copy of the official documents showing legal interest of the applicant in the property to be affected;
3. A narrative describing:
  - a. The purpose of the project,
  - b. The type of alteration to the wetland (fill, culvert, dredge, etc.),
  - c. Why there is no practicable alternative to impacting the wetland, and
  - d. How the proposed activity has been designed to minimize the impact on the wetland;
4. A plan view showing the site as viewed from above is required. The plan view must:
  - a. be drawn at an appropriate scale, but no smaller scale than one inch equals one hundred (100) feet and show the proposed activity, the location and size of all existing and proposed structures, roads, parking areas, and sewage treatment facilities,
  - b. contain a Code block in the lower right-hand corner. The block must contain the :
    - i. name(s) and address(es) of the applicant or owner,
    - ii. name and address of the preparer of the plan, with professional seal, if applicable,
    - iii. name of plan, date of plan preparation, and a revision number and date, if applicable and,

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- iv. map and lot number(s) according to Kittery tax maps shown in the lower right-hand corner in bold lettering and ¼ inches high.
  - c. show a north arrow,
  - d. show property boundaries,
  - e. show the location of any wetlands, shorelines and flood plains. Wetland boundaries must be delineated using the Corps of Engineers Wetlands Delineation Manual - Waterways Experiment Station Technical Report Y-87-1, January 1987", (1987 Manual),
  - f. show the location (tied by measurement to identifiable structures or boundary points) of all proposed draining, fill, grading, dredging, and vegetation removal, including specification of amount of materials to be added or removed and procedures to be used,
  - g. indicate the square footage of wetlands to be affected by the proposed activity,
  - h. show the direction of natural water flow over the land, in the wetland, and in the proposed alteration area,
  - i. show the location of the one hundred (100) year floodway and flood hazard boundaries as shown on the current effective National Flood Insurance Program maps, if applicable,
  - j. specify the number of cubic yards, and type of material to be used as fill, if fill material is involved,
  - k. specify the type of material, number of cubic yards, method of handling, and the location of fill and spoil disposal area, if dredge material is involved, and
  - l. show all owners of property within one hundred fifty (150) feet of the proposed alteration together with their mailing addresses and map and lot designations from the assessor's records,
5. A vicinity map utilizing a topographic map at a scale no smaller than one inch equals 600 feet showing the boundary of the proposed activity.;
6. One set of photographs, taken during the growing season if possible, showing the wetland, adjacent water bodies if applicable, and the alteration area before development begins.
- B. Additional Requirements. In its consideration of an application, the Board may at any point in the review, require the applicant to submit additional materials, studies, analyses, and agreement proposals that the Board may deem necessary for a complete understanding of the application. Such material may include the following items:
- 1. a site plan showing existing and proposed topographic contours at two-foot intervals;
  - 2. a hydrologic analysis in accordance with the requirements of Chapter 16.9;
  - 3. cross-section drawings showing the nature of the construction, the depth of excavation or height of fill, if applicable, and surface water and groundwater elevations.
  - 4. An evaluation, by a qualified wetlands scientist or a Maine Certified Soils Scientists, assessing the functions of the wetland and the impact of the proposed activity on these functions.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

C. Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which, in total, affect or fill more than five hundred (500) square feet of wetlands.

1. The wetland mitigation plan and report must contain the following:

a. Plan at a scale of one inch equals one hundred (100) feet that shows two-foot contour intervals, existing wetland boundaries, the area of wetland to be altered, project dimensions and all offsite wetlands, being extensions of the wetland to be altered;

b. Existing wetland characteristics including water depth, vegetation and fauna;

c. Functional assessment, conducted by a qualified wetlands scientist or a Maine Certified Soils Scientist, on the wetland to be altered, which analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The Wetland Evaluation Technique (WET) methodology, published by the U.S. Army Corps of Engineers is one acceptable methodology. Other comparable assessment techniques may be accepted provided the applicant submits documentation of how the methodology was developed, how the wetland functions and values are determined, and how much field testing the technique has undergone; and

d. Photographs of the wetland to be altered which show its characteristics.

2. Description of the overall proposed activity with particular reference to its impact on the wetland, including the precise location of the activity, its dimensions, the amount and type of fill (if any proposed), any proposed drainage, the timing and procedures proposed for the alteration, and any efforts proposed for reducing impacts. The Planning Board may require certain fill areas (such as storm water storage basins, solid waste landfills, fill behind retaining walls, etc.) to be structurally engineered.

3. Plan for the proposed wetlands work, if any, including a topographic plan at the scale of one inch equals one hundred (100) feet showing two-foot contour intervals and proposed wetland boundaries. This plan must also include:

a. Proposed boundaries and characteristics of the mitigation site, including elevation, sources of water, and proposed vegetation;

b. Narrative describing the specific goals in terms of particular wetland functions and values. These goals must be related to those of the original wetland;

c. Narrative describing the available literature or experience to date (if any) for carrying out the mitigation work;

d. Proposed implementation and management procedures for the wetlands work;

e. Description of the short-term and long-term sources of water for this wetland, including the water quality of these sources;

f. Plans for re-planting, including a description of plant species, sizes and sources of plant material, as well as how, when and where seeding or planting will take place;

g. Proposed buffers or protective measures such as sediment control methods;

h. Plans for monitoring the wetlands work, showing capability for mid-course corrections; and

i. Plans, if any, for control of non-indigenous plant species.

4. For wetlands work involving creation, restoration and or enhancement of degraded wetlands, a maintenance agreement must be approved by the Board and recorded in the York County Registry of Deeds. The maintenance agreement must be conveyed or a deed restriction imposed, and such maintenance responsibility is not dissolvable without Council approval. The maintenance agreement must meet, or exceed, the criteria listed in Section 16.9.3.12C.3.

5. For projects involving preservation of wetlands or adjacent uplands, a conservation easement must be conveyed or deed restriction imposed so that the parcel will remain undeveloped in perpetuity.

#### **Article IV. Wetland Setbacks for Special Situations**

##### **16.9.4.1 Wetland Setbacks Extending Beyond Publicly Accepted Streets.**

The required setback distances do not extend beyond the centerline of publicly accepted street that generally parallels the normal high-water line of a water body, tributary stream or the upland edge of a wetland.

##### **16.9.4.2 Newly-created Wetlands and Water Bodies.**

Setbacks are not required from a wetland or water body created from upland land area provided the newly-created wetland or water body is not part of a required mitigation plan.

A. Wetland setbacks for the zoning district and the shore land overlay district apply.

B. A performance guarantee, such as an escrow or bond, is required to guarantee that new vegetation will survive. Prior to the release or drawdown of funds in such accounts, a written statement from a qualified wetlands scientist that says the vegetation is thriving must be submitted to the Town Manager.

##### **16.9.4.3 Setbacks from Altered Wetlands or Water Bodies.**

The illegal altering of a water body or wetland area, where the surface area of the water body is decreased (lowered), after May 13, 1987 may not be used to change the location from which a setback is measured. The illegal filling of a water body or wetland area, where the normal water surface area of the water body is increased (raised), after May 13, 1987 must be measured from the most recent edge of the normal water surface elevation.

Alterations to the wetland boundaries that have been approved by the Planning Board and are in compliance with regulations of the Army Corps of Engineers and the Maine Department of Environmental Protection, may be constructed per the Planning Board's approved wetlands alteration plan.

##### **16.9.4.4 Setbacks for Utility Poles.**

Setbacks for utility poles must be shown and identified on the development plans. Distances from utility pole structures and the upland edge of wetlands of any type may not have to be set back from the wetland. Such setback distances require Planning Board approval.

##### **16.9.4.5 Utilities within a Wetland.**

Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the applicant's engineer must provide trench details for depth, distance between pipes, if applicable, fill materials, minimum compaction and or encasement.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- A. Rotted material, muck and unsuitable soils must be removed from the trench and replaced with select materials that provide the required compaction, pipe support and protection.
- B. Trenches for shallow depth pipes (having less than 4 feet of cover) must be designed to avoid pipe movement that may result in breakage.

# RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

<b>Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies*</b>			
<b>STRUCTURE/ACTIVITY</b>	<b>TOTAL SIZE OF WETLAND AND/OR WATER BODY</b>		
	<b>&lt; 501 square feet</b>	<b>501 square feet – 1 acre and Intermittent Streams</b>	<b>&gt; 1 acre</b>
Local distribution utility pole, fence, flagpole, signs or drainage structure	0	0	0
Functionally water-dependent uses	0	0	0
<b>Roads and Driveways</b>			
Traveled way of road or driveway of 18 feet or less in width <sup>1</sup>	0	10 feet from Toe of slope	10 feet from Toe of slope
Traveled way of road or driveway greater than 18 feet in width <sup>1</sup>	0	30 feet or 10 feet from Toe of slope whichever is greater	30 feet or 10 feet from Toe of slope whichever is greater
<b>Parking Areas</b>			
Parking areas for one- and two-family residential uses	0	10 feet	20 feet
1—5 stall parking area	0	30 feet	50 feet
6—20 stall parking area incorporating BMPs for stormwater management <sup>2</sup>	0	40 feet	75 feet
6—20 stall parking area without incorporating BMPs for stormwater management. <sup>2</sup>	0	75 feet	100 feet
21+ stall parking area <sup>3</sup> incorporating BMPs for stormwater management	0	50 feet	75 feet

\* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

<sup>1</sup> The street setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the Planning Board.

<sup>2</sup> Written endorsement by the York County Soil and Water Conservation District (YCSWCD) or the Town's peer review consultant that Best Management Practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The Planning Board may waive the requirement for written endorsement by the YCSWCD or the Town's peer review consultant when it finds a drainage plan has adequately protected the wetland from adverse impacts.

<sup>3</sup> 21+ stall parking areas must incorporate BMPs.

<b>Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies*</b>			
<b>STRUCTURE/ACTIVITY</b>	<b>TOTAL SIZE OF WETLAND AND/OR WATER BODY</b>		
	<b>&lt; 501 square feet</b>	<b>501 square feet - 1 acre and Intermittent Streams</b>	<b>&gt; 1 acre</b>
<b>Patios, Decks, Accessory Buildings</b>			
Patio or deck area no larger than 500 square feet in size	0	30 feet	50 feet
Detached residential storage shed no larger than 120 square feet in size	0	30 feet	50 feet
<b>Other Buildings and Structures</b>			
Building or structure (including patio or deck area larger than 500 square feet in size)	0	50 feet	100 feet
Activities and structures permitted within regulated wetlands	0	0 feet	0 feet
<b>Subsurface Sewage Disposal</b>			
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD	0	50 feet	100 feet
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more	0	100 feet	100 feet
<b>Recreational Uses and Structures</b>			
Low-intensity recreation	0	0	0
Recreational facility or structure excluding a golf course	0	50 feet	100 feet
<b>Topsoil Removal</b>			
Removal of more than 10 cubic yards of topsoil except for approved projects	0	50 feet	100 feet

\* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

# RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

<b>Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies*</b>			
<b>STRUCTURE/ACTIVITY</b>	<b>TOTAL SIZE OF WETLAND AND/OR WATER BODY</b>		
	<b>&lt; 501 square feet</b>	<b>501 square feet - 1 acre and Intermittent Streams</b>	<b>&gt; 1 acre</b>
Topsoil removal with a soil conservation service endorsed erosion and sedimentation plan	0	25 feet	25 feet
<b>Special Uses</b>			
Junkyard <sup>1</sup>	0	100 feet	150 feet
Bulk salt storage not in an enclosed structure <sup>1</sup>	0	100 feet	150 feet
Gravel and mineral extraction or Processing <sup>1</sup>	0	100 feet	150 feet
Storage of hazardous chemicals or special wastes other than amounts normally associated with individual house-holds/farms <sup>1</sup>	0	100 feet	150 feet
Commercial painting, wood preserving or furniture stripping <sup>1</sup>	0	100 feet	150 feet
Laundromats, auto wash, printing, dry-cleaning, photographic processing if not connected to a sanitary Sewer <sup>4</sup>	0	100 feet	150 feet
Metal plating, finishing, polishing <sup>1</sup>	0	100 feet	150 feet

\* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

<sup>4</sup> Wetland setback may be reduced to 100 feet if the YCSWCD or the Town's peer review consultant find the stormwater management plan incorporates BMPs for protecting water quality by minimizing pollutants leaving the site in the stormwater.



## **Article V. Timber Harvesting**

### **16.9.5.1 Timber Harvesting (As Permitted in R-RLC and MU Zones).**

#### **A. Repeal of the Timber Harvesting Regulation.**

Subsequent to the establishment of the State of Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards, the State will commence administration of all timber harvesting within the Shoreland Overlay Zone. Under 38 M.R.S. §438-A(5), the following provisions of this Code will be repealed: In Section 16.2.2 – Definitions: "forest management activities" and "residual basal area".

#### **B. Timber harvesting must conform to the following provisions:**

1. Selective cutting of no more than forty (40) percent of the total volume of trees, four (4) inches or more in diameter, measured at 4½ feet above ground level on any lot in any ten (10) year period is permitted. In addition:

a. Within seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland, clearcut openings are prohibited and a well-distributed stand of trees and other vegetation, including existing ground cover, must be maintained.

b. At distances greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies or the upland edge of a wetland, harvesting operations are limited to single clearcut openings of ten-thousand (10,000) square feet or less in the forest canopy. Where such openings exceed five-thousand (5000) square feet they must be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings must be included in the calculation of total volume removal. For purposes of these standards volume may be considered equivalent to basal area.

2. Timber harvesting operations exceeding the 40% limitation in Section 16.9.5.1B, above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Code. The Planning Board is required to notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

3. No accumulation of slash is to be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash must either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream must be removed.

4. Timber harvesting equipment is prohibited from using stream channels as travel routes except when:

a. Surface waters are frozen; and

b. The activity will not result in any ground disturbance.

5. All crossings of flowing water require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

6. Skid trail approaches to water crossings must be located and designed to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts must be removed and areas of exposed soil revegetated.

7. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil must be located so an un-scarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent must be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the un-scarified strip must be increased by twenty (20) feet, horizontal distance. The provisions of this section apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face can be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

## **Article VI. Overboard Discharge Systems**

### **16.9.6.1 Treated Overboard Discharge System Defined.**

“Treated overboard discharge system” means any sandfilter system, mechanical system or primary treatment with disinfection system designed to state of Maine, Department of Environmental Protection, specifications which discharges effluent or other liquids into any water body or watercourse.

### **16.9.6.2 Permit Requirement.**

No person, firm or corporation may construct, install or maintain any “treated overboard discharge system” without first obtaining a Town permit for the same. Such permit is in addition to any other permit or license required by state or federal authorities for the same.

### **16.9.6.3.1 Application for Permit—Fee.**

All applicants for permits must first apply to the Board of Appeals with a copy of the application given to the Code Enforcement Officer. The application form for a treated overboard discharge system must include the property owner’s name and mailing address and telephone number, the applicant’s name and address and telephone number, the location address; tax maps and lot numbers, and engineer’s scale drawing showing all relevant details of the system, and any other information deemed relevant or necessary by either the Board of Appeals or the Code Enforcement Officer. A fee as set out in Appendix A is required for each application. Application forms are to be available from the Code Enforcement Officer.

### **16.9.6.3.2 Issuance of Permits—Fee.**

The treated overboard discharge permit may be issued by the Code Enforcement Officer only after Board of Appeals approval. A permit issue fee as set out in Appendix A is required for each system.

### **16.9.6.3.3 Notice of Hearing.**

A. Upon receipt of the completed application, the Board must timely notify the Code Enforcement Officer of the established hearing date which may be no more than thirty (30) days from the date of the receipted application. The Code Enforcement Officer must also notify the Planning Board, abutters, and applicant of the hearing date. The Code Enforcement Officer must also give public notice of the permit hearing date by advertising the same in a newspaper of general circulation within the Town at least seven days prior to the hearing date.

B. For the purposes of this section, the abutting owners of property are considered to be the parties listed by the assessors of taxes for the Town as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing does not necessitate another hearing or invalidate any action by the Board of Appeals.

**16.9.6.3.4 Conduct of Hearing and Standards.**

The Board must conduct the hearing on the application for a treated overboard discharge system permit by following the same procedures established for the consideration of a special exception under the terms of Section 16.6.6.

A. The Board may receive oral and documentary evidence and testimony. At the close of the evidentiary portion of the hearing, the board must consider whether the effluent or discharge from the proposed treated overboard discharge system will have a negative impact on any aquatic or fowl life, will lower the water quality standard or impair the uses designated by the classification of the receiving waters. In addition, the board may consider any relevant provisions of the performance standards set forth in Chapters 16.8 and 16.9.

B. The Board may also consider any relevant state or federal statute, rules or regulations bearing on the same. After applying the standards contained herein, the board must issue its decision containing its findings of fact and conclusions and approve the application if the board is satisfied that the standards have been met.

**16.9.6.3.5 Notice of Decision.**

The Board of Appeals must notify the applicant in writing of its decision no later than ten (10) days thereafter.

**16.9.6.4 Systems Exempted.**

The permit requirement of this chapter does not apply to any sewage disposal system in operation at the time this chapter is adopted or the subsequent repair or replacement of any such system including replacement by treated overboard discharge, except that any treated overboard discharge system, as defined herein and operating as of the date of the adoption of this chapter or subsequently installed as a replacement for an existing malfunction in-ground or overboard system under license by the state of Maine, is required to conform to the standards of maintenance and monitoring set forth in Section 16.9.6.5.

**16.9.6.5 Standards of Maintenance and Monitoring.**

Treated overboard discharge systems that are operating by virtue of a permit issued under the terms of this chapter, or any such system operating as of the date of the enactment of this chapter pursuant to a license issued by the state of Maine, must be maintained and monitored pursuant to the following standards:

A. Disinfection. Disinfection is to be provided in a manner acceptable to the Maine Department of Environmental Protection. An approved disinfectant must be used and maintained according to the replacement or renewal schedule established by the Department of Environmental Protection.

B. Septic Tanks. Septic tanks which are part of an overboard discharge system must be pumped annually to ensure that the accumulated sludge is never nearer than twelve (12) inches to the invert of the outlet pipe leading from the septic tank to the sandfilter.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

C. **Monitoring.** The permit holder and/or the property owner must supply to the Code Enforcement Officer, prior to August 1st of each year, a report of the effluent analysis conducted by a recognized testing laboratory. All water samples for evaluation must be obtained and analyzed during the month of July. Each analysis must include the following tests:

1. Fecal coliform (number of colonies per milligram of water);
2. Biological oxygen demand (BOD) and suspended solids (mg/l);
3. Settleable solids (mg/l after a twenty (20) minute settling period in an Imhoff cone).

In addition to the requirements contained in this subsection, the Code Enforcement Officer may require periodic operational reports from recognized laboratories in such form and containing such information as the Code Enforcement Officer may require.

D. **Sandfilters.** Whenever the BOD levels exceed the limits specified in the regulations of the Maine Department of Environmental Protection, or when there are other indications of the sandfilter malfunctioning, the sandfilter is to be inspected by a qualified professional. If the sandfilter is found to be clogged, it must be replaced with new material meeting specifications of the Maine Department of Environmental Protection.

E. **Emergency Measures.** In the event that a treated overboard discharge system is found to be malfunctioning, for any reason, the septic or settling tank must be pumped immediately and continue to be pumped as often as required until the malfunctioning is corrected.

### **16.9.6.6 Malfunctioning of Systems.**

The permit owner and/or property owner must immediately notify the Code Enforcement Officer of any malfunction of any component of the treated overboard discharge system. In the event that the system malfunctions, the Code Enforcement Officer may order that the effluent discharge cease within a time set by the Code Enforcement Officer.

### **16.9.6.7 System Construction.**

A. **Notice to Code Enforcement Officer and DEP.** Before any work is undertaken pursuant to a permit issued under the terms of this chapter, the permit holder and/or property owner must notify the Code Enforcement Officer and the Department of Environmental Protection (DEP) at least seven days prior to commencement of the system's construction in order that all proper inspections of the proposed construction may be made by the Code Enforcement Officer and the DEP.

B. **Certificate of Compliance.** Upon the completion of the construction of the treated overboard discharge system and prior to its operation, the Code Enforcement Officer is to issue a certificate of compliance certifying that the system complies with all municipal ordinances, rules and regulations.

### **16.9.6.8 Violation—Penalty.**

Failure to conform to the provisions of the chapter constitutes a violation. A written notice of violation must be sent by the Code Enforcement Officer to the permit holder and/or the property owner operating the treated overboard discharge system which is in noncompliance with this chapter.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

A. This notice is to be sent by certified mail, return receipt requested, and must inform the permit holder and/or property owner of the deadline for correcting the malfunction. The permit holder and/or property owner is to be given a reasonable time, not to exceed thirty (30) days, to correct the malfunction.

B. If the violation is not corrected within this specified time period, the Code Enforcement Officer must notify the permit holder and/or the property owner by certified mail, return receipt requested, that their permit is revoked.

C. Each day that the system is allowed to discharge after the notice of permit revocation is received constitutes a separate offense. A fine of not more than one hundred dollars (\$100.00) will be levied for each such separate offense. In addition to the remedy contained herein, said violation constitutes a nuisance for which the municipality, through its Code Enforcement Officer, may seek adequate remedy.

D. Any actual and direct expenses incurred by the Town in abatement of such nuisance may be recovered from the permit holder and/or property owner by civil complaint.

### **16.9.6.9 Property Rights.**

The issuance of any permit authorized by this chapter does not convey any property rights to the permit holder. The permit holder and/or the property owner by accepting the permit under the terms of this chapter consent to allow the Code Enforcement Officer, or authorized agent, at all reasonable and proper times to enter upon the property for inspection of the system or otherwise enforce the terms of this chapter.

### **16.9.6.10 Permit Expiration Date.**

Such permit automatically expires within ninety (90) days after the municipal sanitary sewer system becomes available within two hundred (200) feet of the property line of the lot or parcel of land on which the treated overboard discharge system is located as measured along the public way.

### **16.9.6.11 Enacting Authority.**

This chapter is adopted under the Town general police powers and home rule authority set forth in Title 30-A M.R.S. §2155 and §1917.

## **Article VII. Non-Storm Water Discharge**

### **16.9.7.1 Basis / Purpose / Objectives.**

A. The Town of Kittery, enacts this Non-Storm Water Discharge Ordinance (the “Ordinance”) pursuant to 30-A M.R.S. § 3001 (municipal home rule ordinance authority), 38 M.R.S. § 413 (the “Wastewater Discharge Law”), 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act”), and 40 CFR Part 122 (U.S. Environmental Protection Agency’s regulations governing the National Pollutant Discharge Elimination System (“NPDES”).

The Maine Department of Environmental Protection, through its promulgation of the “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” dated June 2008, has listed the Town of Kittery as having a Regulated Small Municipal Separate Storm Sewer System (“Small MS4”); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Municipality’s Storm Water Management

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

B. The purpose of this Non-Storm Water Discharge Ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Kittery, through the regulation of Non-Storm Water Discharges to the Municipality's Storm Drainage System as required by federal and State law. This Ordinance establishes methods for controlling the introduction of Pollutants into the Town's Storm Drainage System in order to comply with requirements of the federal Clean Water Act and State law.

C. The objectives of this Article are:

1. To prohibit unpermitted or unapproved Non-Storm Water Discharges to the Storm Drainage System; and
2. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this Ordinance.

### 16.9.7.2 Definitions.

**Clean Water Act** means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

**Discharge** means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to "waters of the State." "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.

**Enforcement Authority** means the person(s) or department authorized under 8.10.040 of this Ordinance to administer and enforce this Ordinance.

**Exempt Person or Discharge** means any person who is subject to a Multi-Sector General Permit for Industrial Activities, a General Permit for Construction Activity, a General Permit for the Discharge of Stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a General Permit for the Discharge of Stormwater from State or Federally Owned Authority Municipal Separate Storm Sewer System Facilities; and any Non-Storm Water Discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

**Illicit Discharge** means any discharge to the small MS4 that does not consist entirely of stormwater or authorized non-stormwater discharges.

**Industrial Activity** means activity or activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**Municipal Separate Storm Sewer System, or MS4** means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

**National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit** means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

**Non-Storm Water Discharge** means any Discharge to an MS4 that is not composed entirely of Storm Water.

**Pollutant** means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

**Premises** means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

**Regulated Small MS4** means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” dated June 2008 (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

**Small Municipal Separate Storm Sewer System, or Small MS4** means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

**Storm Drainage System** means the entire Municipality’s storm drainage system.

**Storm Water** means any Storm Water runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”

**Urbanized Area (“UA”)** means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

### **16.9.7.3 Applicability.**

This Ordinance shall apply to all Persons discharging Storm Water and/or Non-Storm Water Discharges from any premise into the Storm Drainage System.

### **16.9.7.4 Responsibility for Administration.**

The Code Enforcement Officer is the Enforcement Authority who shall administer, implement, and enforce the provisions of this Ordinance.

### **16.9.7.5 Prohibition of Non-Storm Water Discharges.**

A. General Prohibition. Except as allowed or exempted herein, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Drainage System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Municipality may have approved the connections, drains or conveyances by which a Person Discharges unallowable Non-Storm Water Discharges to the Storm Drainage System.

B. Allowed Non-Storm Water Discharges. The creation, initiation, origination and maintenance of the following Non-Storm Water Discharges to the Storm Drainage System is allowed:

1. Flow:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing;

2. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and

3. Dye testing, with verbal notification to the Enforcement Authority prior to the time of the test.

### **16.9.7.6 Exempt Person or Discharge.**

This Ordinance shall not apply to an Exempt Person or Discharge, except that the Enforcement Authority may request from Exempt Persons and Persons with Exempt Discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the Discharge(s).

### **16.9.7.7 Suspension of Access to the Municipality's Storm Drainage System.**

A. The Enforcement Authority may, without prior notice, physically suspend Discharge access to the Storm Drainage System to a Person when such suspension is necessary to stop an actual or threatened Non-Storm Water Discharge to the Storm Drainage System which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Storm Drainage System, or which may cause the Municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the Discharge to prevent or minimize a Non-Storm Water Discharge to the Storm Drainage System.

B. If the Person fails to comply with a suspension order issued in an emergency, the Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the Storm Drainage System, or to minimize danger to persons, provided, however, that in taking such steps the Enforcement Authority may enter upon the Premises that are the source of the actual or threatened Non-Storm Water Discharge to the Storm Drainage System only with the consent of the Premises' owner, occupant or agent.

### **16.9.7.8 Monitoring of Discharges.**

In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at reasonable hours with the consent of the Premises' owner, occupant or agent: to inspect the Premises and connections thereon to the Storm Drainage System; and to conduct monitoring, sampling and testing of the Discharge to the Storm Drainage System.



**16.9.6.9 Enforcement and Penalties.**

See Sections 16.4.4 and 16.4.5.

**16.9.7.10 Ultimate Responsibility of Discharger.**

The standards set forth herein are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor unauthorized discharge of Pollutants into waters of the U.S. caused by said Person. This Ordinance shall not create liability on the part of the Municipality, or any officer agent or employee thereof for any damages that result from any Person's reliance on this Ordinance or any administrative decision lawfully made hereunder.

**Article VIII. Floodplain Management** (Ordained 9/26/11; effective 10/27/11)

**16.9.8.1 Statement of Purpose and Intent.**

Certain areas of the Town are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of federally subsidized flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this article.

It is the intent of the Town to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards. This body has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A M.R.S. §3001-3007, 4352 and 4401-4407.

**16.9.8.2 Definitions.**

Unless specifically defined in Chapter 16.2, words and phrases used in this chapter have the same meaning as they have in common law to give this chapter its most reasonable application.

**16.9.8.3 Establishment.**

The Town elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This article establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the Town.

The areas of special flood hazard, Zones A, A1—30, AE, AO, AH, V1—30 and/or VE, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study—Town of Kittery, Maine, York County,” dated January 5, 1984 with accompanying “Flood Insurance Rate Map” dated July 3, 1986 is adopted by reference and declared to be a part of this article.

**16.9.8.4 Permit Required.**

Before any construction or other development (as defined in Section 16.9.8.2), including the placement of manufactured homes, begins within any areas of special flood hazard established in Section 16.9.8.3, a flood

hazard development permit is to be obtained from the Code Enforcement Officer. This permit is in addition to any other building/regulated activity permits which may be required pursuant to this code.

**16.9.8.5 Application for Permit.**

The application for a flood hazard development permit is to be submitted to the Code Enforcement Officer and include:

- A. The name and address of the applicant;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure;
- E. A statement as to the type of sewage system proposed;
- F. Specification of dimensions of the proposed structure;
- G. The elevation in relation to the National Geodetic Vertical Datum (NGVD) or to a locally established datum in Zone A only, of the:
  - 1. Base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. In Zones A1—30, AE, AO, AH, V1—30, and VE from data contained in the “Flood Insurance Study—Town of Kittery, Maine,” as described in Section 16.9.8.3, or
    - b. In Zone A, to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building,
  - 2. Highest and lowest grades at the site adjacent to the walls of the proposed building,
  - 3. Lowest floor, including basement; and whether or not such structures contain a basement, and
  - 4. Level, in the case of nonresidential structures only, to which the structure will be floodproofed;
- H. A description of a base flood elevation reference point established on the site of all new or substantially improved structures;
- I. A written certification by a registered land surveyor that the elevations shown on the application are accurate;
- J. Certification by a registered professional engineer or architect that floodproofing methods for any:
  - 1. Nonresidential structures will meet the floodproofing criteria of subsection (G)(4) of this section, subsection G of Section 16.9.8.8, and other applicable standards in Section 16.9.8.8, and
  - 2. Construction in coastal high hazard areas, Zones V1—30 and VE, will meet the floodproofing criteria of subsection K of Section 16.9.8.8, and other applicable standards in Section 16.9.8.8;
- K. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
- L. A statement of construction plans describing in detail how each applicable development standard in Section 16.9.8.8 will be met.

**16.9.8.6 Application Fee and Expert's Fee.**

A nonrefundable application fee as set out in Appendix A is to be paid to the Town Clerk and a copy of a receipt for the same must accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee must be paid in full by the applicant within ten (10) days after the Town submits a bill to the applicant. Failure to pay the bill constitutes a violation of the ordinance and is grounds for the issuance of a stop work order. An expert may not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

**16.9.8.7 Review of Flood Hazard Development Permit Applications.**

The Code Enforcement Officer must:

- A. Review all applications for the flood hazard development permit to assure that proposed building sites are reasonably safe from flooding and to determine that all pertinent requirements of Section 16.9.8.8 Development standards, have, or will be met;
- B. Utilize, in the review of all flood hazard development permit applications, the base flood data contained in the “Flood Insurance Study—Town of Kittery, Maine,” as described in Section 16.9.8.3. In special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer is to obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other sources, including information obtained pursuant to Sections 16.9.8.5(G)(1)(b), 16.9.8.8I and 16.9.8.10D, in order to administer Section 16.9.8.8 of this article;
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 16.9.8.3;
- D. In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Office of Community Development prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. Issue a two-part flood hazard development permit for elevated structures. Part I is to authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant must provide the Code Enforcement Officer with an application for Part II of the flood hazard development permit and include an elevation certificate completed by a registered Maine surveyor for compliance with the elevation requirements of subsections F, G, H and K of Section 16.9.8.8. Following review of the application, which review must take place within three working days of receipt of the application, the Code Enforcement Officer is to issue Part II of the flood hazard development permit. Part II authorizes the applicant to complete the construction project; and
- G. Maintain, as a permanent record, copies of all flood hazard development permits issued and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Section 16.9.8.11; and copies of elevation certificates and certificates of compliance required under the provisions of Section 16.9.8.9.

**16.9.8.8 Development Standards.**

All developments in areas of special flood hazard are to meet the following applicable standards:

- A. New construction or substantial improvement of any structure must:
  - 1. Be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - 2. Use construction materials that are resistant to flood damage;
  - 3. Use construction methods and practices that will minimize flood damage; and

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

4. Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

B. All new and replacement water supply systems are to be designed to minimize or eliminate infiltration of flood waters into the systems.

C. All new and replacement sanitary sewage systems are to be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. On-site waste disposal systems are to be located and constructed to avoid impairment to them or contamination from them during floods.

E. All development is to be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of any watercourse.

F. New construction or substantial improvement of any residential structure located within:

1. Zones A1—30, AE and AH are to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zones AO and AH are to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO are to have the lowest floor (including basement) elevated above the highest adjacent grade:
  - a. At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
  - b. At least three feet if no depth number is specified.
4. Zone A is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 16.9.8.5(G)(1)(b), 16.9.8.7B or 16.9.8.10D.
5. Zones V1—30 and VE are to meet the requirements of subsection K of this section.

G. New construction or substantial improvement of any nonresidential structure located within:

1. Zones A1—30, AE and AH are to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities must:
  - a. Be floodproofed to at least one foot above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification must be provided with the application for a flood hazard development permit, as required by Section 16.9.8.5J and include a record of the elevation above mean sea level of the lowest floor including basement.
2. Zones AO and AH are to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO are to have the lowest floor (including basement) elevated above the highest adjacent grade:
  - a. At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
  - b. At least three feet if no depth number is specified; or

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

c. Together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of subsection (G)(1) of this section.

4. Zone A is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 16.9.8.5(G)(1)(b), 16.9.8.7B or 16.9.8.10D.

5. Zones V1—30 and VE are to meet the requirements of subsection K of this section.

H. New or substantially improved manufactured homes located within:

1. Zones A1—30, AE or AH must:

a. Be elevated on a permanent foundation such that the lowest floor is at least one foot above the base flood elevation; and

b. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

i. Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than fifty (50) feet long require one additional tie per side); or by,

ii. Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than fifty (50) feet long require four additional ties per side).

iii. All components of the anchoring system described in subsections (H)(1)(b)(i) and (ii) of this section must be capable of carrying a force of four thousand eight hundred (4,800) pounds.

2. Zones AO and AH are to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO is to have the lowest floor (including basement) elevated above the highest adjacent grade:

a. At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or

b. At least three feet if no depth number is specified; and

c. Meet the requirements of subsections (H)(1)(a) and (b) of this section.

4. Zone A is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 16.9.8.5(G)(1)(b), 16.9.8.7B or 16.9.8.10D.

5. Zones V1—30 and VE are to meet the requirements of subsection K of this section.

I. Floodways.

1. In Zones A1—30 and AE encroachments, including fill, new construction, substantial improvement, and other development are not permitted in riverine areas, for which a regulatory floodway is designated on the community's "Flood Boundary and Floodway Map," unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. In Zones A1—30 and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development not permitted unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

a. Will not increase the water surface elevation of the base flood more than one foot at any point within the community; and

b. Is consistent with the technical criteria contained in Section 2-7 entitled "Hydraulic Analyses," Flood Insurance Study—Guidelines and Specifications for Study Contractors, FEMA 37/September, 1985, as amended.

3. In Zone A riverine areas, in which the regulatory floodway is determined to be the channel of the river or other watercourse and the adjacent land areas to a distance of one-half the width of the floodplain as

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

measured from the normal high water mark to the upland limit of the floodplain, encroachments, including fill, new construction, substantial improvement, and other development not permitted unless a technical evaluation certified by a registered professional engineer is provided meeting the requirements of subsection (l)(2) of this section.

J. New construction or substantial improvement of any structure in Zones A1—30, AE, AO, AH and A that meets the development standards of this section, including the elevation requirements of subsection F, G or H of this section and is elevated on posts, columns, piers, piles, “stilts” or crawlspaces less than three feet in height may be enclosed below the elevation requirements provided all the following criteria are met or exceeded:

1. Walls, with the exception of crawlspaces less than three feet in height, must not be part of the structural support of the building; and
2. Enclosed areas are not “basements” as defined in Section 16.9.8.2; and
3. Enclosed areas are to be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either:
  - a. Be certified by a registered professional engineer or architect, or
  - b. Meet or exceed the following minimum criteria:
    - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area,
    - ii. The bottom of all openings may be no higher than one foot above the lowest grade, and
    - iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other nonautomatic mechanical means; and
4. The enclosed area may not be used for human habitation; and
5. The enclosed area may be used for building maintenance, access, parking vehicles, or storing of articles and equipment used for maintenance of the building.

K. Coastal Floodplains.

1. All new construction located within Zones V1—30 and VE are to be located landward of the reach of the highest annual spring tide.
2. New construction or substantial improvement of any structure located within Zones V1—30 or VE must:
  - a. Be prohibited unless the following criteria are met:
    - i. The area is zoned for general development or its equivalent, as defined in the Mandatory Shoreland Zoning guidelines adopted pursuant to 38 §438-A, or
    - ii. The area is designated as densely developed as defined in 38 §436-A, subsection 3;
  - b. Be elevated on posts or columns such that:
    - i. The bottom of the lowest structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood level,
    - ii. The pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components, and
    - iii. Water loading values used must be those associated with the base flood. Wind loading values used must be those required by applicable state and local building standards;
  - c. Have the space below the lowest floor:
    - i. Free of obstructions, or
    - ii. Constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns, or

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- iii. Constructed with nonsupporting breakaway walls which have a design safe loading resistance of not less than ten (10) or more than twenty (20) pounds per square foot.
- 3. A registered professional engineer or architect must:
  - a. Develop or review the structural design, specifications and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual (FEMA-55/February, 1986); and
  - b. Certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of subsection (K)(2) of this section.
- 4. The use of fill for structural support in Zones V1—30 and VE is prohibited.
- 5. Human alteration of sand dunes within Zones V1—30 and VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
- 6. The enclosed areas may be used solely for parking vehicles, building access, and storage.

### **16.9.8.9 Certificate of Compliance.**

No land in a special flood hazard area may be occupied or used and no structure which is constructed or substantially improved may be occupied until a certificate of compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. The applicant must submit an elevation certificate completed by:
  - 1. A registered Maine surveyor for compliance with subsection F, G, H or K of Section 16.9.8.8, and
  - 2. A registered professional engineer or architect, in the case of:
    - a. Floodproofed nonresidential structures, for compliance with Section 16.9.8.8G; and
    - b. Construction of structures in the coastal floodplains for compliance with Section 16.9.8.8(K)(3).
- B. The application for a certificate of compliance is to be submitted by the applicant in writing along with a completed elevation certificate to the Code Enforcement Officer.
- C. The Code Enforcement Officer is to review the application within ten (10) working days of receipt of the application and issue a certificate of compliance, provided the building conforms with the provisions of this article.

### **16.9.8.10 Review of Subdivision and Development Proposals.**

The Planning Board must, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five or more acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- E. Any proposed development plan must include a statement that the developer will require that structures on lots in the development be constructed in accordance with Section 16.9.8.80 and that such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The statement must clearly articulate that the municipality may enforce any violation of the construction requirement and that fact is also to be included in the deed or any other document previously described. The construction requirement must also be clearly stated on any map, plat or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW**

### **Article I. Purpose**

#### **16.10.1.1 General.**

The purpose of this chapter is to outline the application and review process for development of any type within the Town.

### **Article II. Master Site Development Plan**

#### **16.10.2.1 Pre-application and Conference.**

Before submitting a proposed master site development plan to the Board, the owner must meet with the Town staff to discuss the feasibility and conceptual design, including sketch plans regarding land use, parcel layout, public improvement, and the surrounding existing development and environment.

#### **16.10.2.2 Master Site Development Plan Review Process.**

The applicant must prepare and submit, for review and consideration by the Planning Board, a sketch plan and subsequently, for review and possible approval by the Planning Board, a master site development plan for the mixed-use development of the parcel. A master site development sketch plan must include, at a minimum:

1. Location, type, and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;
2. Proposed provisions for utilities, access roads, parking, and public and private ways;
3. Areas proposed to be permanently dedicated for public or private open space or other public purpose;
4. Proposed buffers between uses and adjacent properties in accordance with the provisions of Section 16.9.17 of this Code;
5. Proposed phasing of the overall site development including the general sequence in which related public and private improvements are to be clearly defined on master site development plan;
6. In the event the development site is not comprised of a single parcel, the master site development plan must detail the manner in which multiple parcels will be consolidated into a single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.

#### **16.10.2.3 Preliminary Master Site Development Plan.**

The preliminary master site development plan must include the following elements: land use, public sites, environmental design, circulation, recreation, water, wastewater, drainage and other elements as set forth in this Code.

- A. The Planning Board may waive one or more elements of the plan, if they are determined inapplicable.
- B. The Planning Board may approve the preliminary master site development plan as submitted, return the preliminary development master plan for additional information or revision, or deny the preliminary development master plan.
- C. The Planning Board is to determine when a preliminary master site development plan becomes the master site development plan with which subsequent submittals must conform. The Planning Board must



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

sign and date the preliminary development master plan to indicate that it is the master site development plan approved by the Board.

D. The master site development plan remains valid as set forth in this chapter, but may be amended and extended as set forth in this chapter.

### **16.10.2.4 Master Site Development Plan Property Plat.**

The owner shall submit a master site development plan property plat, prepared in conformance with the approved master site development plan, to the Planning Board. The Planning Board may approve the master site development plan property plat, return it for additional information or revision, or deny it.

### **16.10.2.5 Recording of Master Planned Property Survey.**

A. The owner must record a master site development plan property survey, but only after Planning Board approval.

B. The Code Enforcement Officer may issue permits only after the master site development plan property survey has been recorded and all other applicable state and local approvals have been obtained.

### **16.10.2.6 Land Division Applications.**

After approval of the master site development plan and recording of the master site development plan property survey, the owner may initiate land division applications.

## **Article III. Development Plan Review and Approval Process**

### **16.10.3.1 General Development, Site, and Subdivision Plans Review.**

All proposed development including site, subdivision, business use and other development must be reviewed for conformance with the procedures, standards and requirements of this Code by the Planning Board except as provided herein, but in all cases by the Town Planner and Code Enforcement Officer and where required the Board of Appeals as provided herein.

### **16.10.3.2 Other Development Review.**

An applicant or applicant's authorized agent must obtain Planning Board approval in accordance with this Code for all development except the following, unless located within the Shoreland Overlay or Resource Protection Overlay Zones:

A. Single and duplex family dwellings, except if within either a Shoreland or Resource Protection Overlay Zone, in addition to other criteria specified in Article X of Chapter 16.10, applicable to the granting of a special exception use request, the Planning Board must review and may approve a development plan for a one to two family residential structure provided the applicant meets all of the applicable Design and Performance Standards.

B. Expansion of existing use where the expanded use will require fewer than six additional parking spaces.

C. Division of land into lots (i.e., two lots) which division is not otherwise subject to Planning Board review as a subdivision.

D. Business use as provided in Section 16.4.3.5.

### **16.10.3.3 Pre-Approval Development Prohibited.**

The applicant or applicant's authorized agent must obtain final Planning Board approval before:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- A. Any contract, or offer for the conveyance of the proposed development (or portion thereof) has been made;
- B. Any subdivision into three or more lots has been recorded in the York County registry of deeds;
- C. A building/regulated activity permit for any structure within the development is issued; or
- D. Work on any improvements (including installation of roads or utilities or land clearing) has begun.

### **16.10.3.4 Shoreland Development Review.**

All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued non-conforming use must be reviewed and approved as provided in this Code, and tracked as a shoreland development for reporting purposes.

### **16.10.3.5 Subdivision Plan Review by State.**

A proposed subdivision approval must be obtained in writing from the Maine Department of Environmental Protection (DEP) before submitting a final subdivision plan, if a proposed subdivision:

- A. Occupies a land area in excess of twenty (20) acres; or
- B. Involves a structure or structures, having in excess of sixty thousand (60,000) square feet of ground area coverage; or
- C. Requires a license from the DEP under some other regulation such as waste discharge or air quality; or
- D. In any other way falls within the jurisdiction of and is subject to review by the DEP.

### **16.10.3.6 Business Use Review.**

All business use including the following must be reviewed by the CEO and Town Planner to ensure compliance with the requirements of this Code including:

- 1. Movement of an existing commercial or business entity from like to like facilities/use where major building/site modifications are not made;
- 2. Movement of an existing commercial or business use into related facility/use buildings;
- 3. Establishment of new commercial or business entity in an existing facility where intensity of use is not significantly different.

### **16.10.3.7 Independent Review/Inspection Consultant Review.**

A. All development may be reviewed by an independent review/inspection consultant(s) engaged by the Code Enforcement Officer, with the approval of the Town manager, after prior notification to and at the expense of the applicant, to assure compliance with all requirements of this Code related to public health, safety and welfare and the abatement of nuisances. The estimated costs of such studies must be deposited with the Town prior to their undertaking.

B. Employment Process

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. The Town Planner, in addition to the Planning Board or Code Enforcement Officer may require the applicant to pay the cost of an independent consultant or specialist engaged by the Town, if required by the Town Planner and approved by the Town manager, to assist with the technical review of applications submitted for new or amended development. The estimated cost of such a review will be deposited in a Town escrow account prior to the application review/inspection work being conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application.
2. Compliance Inspection Fees. The reviewing/inspection consultant, upon direction of the Town Planner, will be assigned to conduct compliance inspections of the approved new or amended plans to assure compliance with the codes and conditions of approval. Inspection compliance reports will become a part of the applicant's project file and submitted at agreed to intervals based on the required inspection items developed between the Town and the developer following Town approval. Copies of all inspection reports will be submitted to the Town Planner, CEO, and project owner or agent. The estimated cost of the compliance inspection will be deposited in a Town escrow account prior to the inspection work being conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application.
3. Records of application review and inspection reports are public records.
4. Determination of the need for application review and/or compliance inspection is made by the Town Planner, with the oversight of the Town manager. The Planning Board will be advised of such requests as they occur.
5. As part of each request, feedback about the process will be gathered by the reviewing/inspection consultant from the applicant, Planning Board, and planning department, and made a part of the record.

### **16.10.3.8 Independent Review Applicant Funding.**

The Planning Board must require an applicant to pay the costs of an independent consultant or specialist whose services the Planning Board may require, at its discretion, to analyze any or all of the application, in the Town's interest.

### **16.10.3.9 Review Fee(s)/Reimbursements.**

- A. All applications for plan approval for properties which come under this Code must be accompanied by a fee as determined by the Town Council.
- B. The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.

**16.10.3.10 Review Meeting(s) Applicant Attendance.**

The applicant, or duly authorized representative must attend all Board meetings for which the applicant's application has been placed on the agenda. Relief may be given from this requirement by the Board chairperson.

**Article IV. Sketch Plan Application Review and Approval Process**

**16.10.4.1 Review Application Form.**

Any person requiring development review must submit an application on forms prescribed by the Planning Board, together with a development plan and such submission contents as may be required in Section 16.10.5.2. A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review before the Planning Board. No more than one approved final plan for a piece of property may exist.

**16.10.4.2 Sketch Plan Review Phase.**

**16.10.4.2.1 Process - Planning Board Review and Decision.**

The Planning Board must within thirty (30) days of sketch plan submission act upon the sketch plan as follows:

- A. The Planning Board must determine whether the sketch plan proposal complies with the standards contained herein, and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
- B. If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; and will classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision.
- C. Any plan may be continued for a total period not to exceed ninety (90) calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the ninetieth day and action completed in accordance with the requirements and timing contained in this Code whether the applicant has accomplished the purposes for which continued or not.
- D. The action to Table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

**16.10.4.2.2 Submittal.**

- A. The sketch plan must be submitted to the Planning Board at the time of, or prior to, the on-site inspection.
- B. The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept including streets, lots, structures, and other features in relation to existing conditions and municipal land use zone(s) regulations.
- C. The sketch may be a free-hand penciled sketch and must include the data listed below.
- D. General subdivision information must describe or outline the existing conditions of the site including:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. Covenants,
2. High intensity Class “A” soil survey and soil interpretation sheets, and
3. Available community facilities and
4. Utilities
5. Proposed development such as:
  - a. number of residential or business lots and/or dwelling units,
  - b. typical lot width and depth,
  - c. price range,
  - d. business areas,
  - e. playgrounds, park areas and other public areas,
  - f. protective covenants,
  - g. utilities and
  - h. street improvements.

E. Non-subdivision (e.g. site plan) development applicants may choose to submit a development sketch plan with design concept at their discretion. Such submissions must comply with all related requirements.

### **Article V. Preliminary Plan Application Review and Approval Process Phase**

#### **16.10.5.1 Planner Review and Confirmation Process- Preliminary Plan.**

##### **16.10.5.1.1 Preliminary Plan Application Filing and Completeness Review.**

A determination as to whether the Town Planner validates an application is based on a review of the application in accordance with the submission contents checklist, filed with the plan, which indicates all elements required under Section 16.10.5.2 and 16.10.7.2 have been received, or written request for waiver of submittal for any non-received items is included. The application must be accompanied by a plan and the required fee together with a certification the applicant has notified abutters by mail of the filing of the plan application for approval.

##### **16.10.5.1.2 Receipt and Scheduling Review.**

Upon validation, the Town Planner must place the application on the Planning Board’s agenda for Planning Board completeness review and acceptance and upon Planning Board acceptance issues a dated receipt to the applicant, which is thereafter the official time of submission.

##### **16.10.5.1.3 Site Inspection.**

In the course of the review of the plan, the Planner must, and the Planning Board may at its discretion, make a physical inspection and may make photographic record of the existing conditions on the site  
(Ordained 9/26/11; effective 10/27/11)

##### **16.10.5.1.4 Advisory Opinions.**

At any time during review, the Planner may request an advisory opinion from the Planning Board, Conservation Commission or Port Authority, on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the Conservation Commission must

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

be invited to review and offer recommendations from an environmental protection perspective. The Planner also must make recommendation on the necessity for independent review.

### **16.10.5.1.5 Planner Analysis.**

The Planner must analyze the application and forward comments to the applicant and the Planning Board with a recommendation as to review category (e.g., site, minor/major subdivision).

### **16.10.5.1.6 Board of Appeals Review Encouraged.**

Where action by the Board of Appeals will be required, such action must be encouraged prior to Planning Board review as indicated in Section 16.6.5.5.

### **16.10.5.1.7 Submission Contents Complete.**

Upon determination by the Planner that the preliminary plan application is complete, the Planner must receive it, together with an application fee in the amount set by the Town Council. (See Appendix A fee schedule.) No application may be deemed complete by the Planning Board until payment of the proper fees.

### **16.10.5.2 Planner Review and Confirmation of Submittal Content - Preliminary Plan.**

A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.

(Ordained 9/26/11; effective 10/27/11)

A. A minimum of fifteen (15) paper copies of the application form, plan and all attachments thereto plus if applicable, five (5) paper copies of the 24 x 36 inches size plan sheets.

B. Plan must include:

1. Plan sheets drawn on a reproducible medium and must measure no less than eleven (11) inches by seventeen (17) inches and no larger than twenty-four (24) inches by thirty-six (36) inches; with a:
2. Scale of the drawings no greater than one inch equals thirty (30) feet for developments less than ten (10) acres, and one inch equals fifty (50) feet for all others;
3. Code block in the lower right-hand corner. The block must contain:
  - a. Name(s) and address(es) of the applicant and owner,
  - b. Name of the project.
  - c. Name and address of the preparer of the plan, with professional seal, if applicable,
  - d. Date of plan preparation/revision, and a unique ID number for the plan and any revisions;
4. Standard boundary survey conducted by a surveyor licensed in the state of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;
5. An arrow showing true north and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;
6. Locus map showing the property in relation to surrounding roads, within two thousand (2,000) feet of any property line of the development,

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

7. Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;

8. Names and addresses of all owners of record of property abutting the development, including those across a street;

9. Locations of essential physical features such as watercourses, forest cover, and outcroppings

10. Proposed development area conditions including, but not limited to:

a. Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within one hundred (100) feet of the property line;

b. Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainage ways;

c. Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;

d. Domestic water source;

e. Parks, open space, or conservation easement locations;

f. Lot lines, interior and exterior, right-of-way, and street alignments;

g. Road and other paved ways plans, profiles and typical sections including all relevant data;

h. Setbacks Existing and proposed;

i. Machinery permanently installed locations likely to cause appreciable noise at the lot lines;

j. Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;

k. Topographic contours of existing contours and finished grade elevations within the development;

l. Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;;

m. Temporary markers locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;

n. Land proposed to be dedicated to public use and the conditions of such dedication;

o. Natural features or site elements to be preserved.

C. Supporting documentation must include:

1. Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within five hundred (500) feet from any boundary of the proposed development;

2. Existing Development Area Conditions including but not limited to:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- a. Location and description of all structures, including signs, existing on the site, together with accesses located within one hundred (100) feet of the property line;
  - b. Essential physical features such as watercourses, wetlands, flood plains, wildlife habitat areas, forest cover, and outcroppings;
  - c. Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainage ways;
3. Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;
  4. Property encumbrances currently affecting the property, as well as any proposed encumbrances;
  5. Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;
  6. Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;  
(Ordained 9/26/11; effective 10/27/11)
  7. Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas.  
(Ordained 9/26/11; effective 10/27/11)
  8. Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;
  9. Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours.
  10. Traffic impact analysis in accordance with Section 16.10.5.2D.1 for developments involving forty (40) or more parking spaces or which are projected to generate more than four hundred (400) vehicle trips per day;
  11. Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
  12. Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;
    - a. Additional submissions as may be required by other sections of this Code such as for clustered development, mobile home parks, or junkyards must be provided.
    - b. Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

c. Additional Requirements. In its consideration of an application/plan, the Planning Board may at any point in the review, require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application.

Such materials may include:

1. Traffic impact analysis, including the following data:

a. An executive summary outlining the study findings and recommendations.

b. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.

c. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).

d. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.

e. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.

f. Trip generation must be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.

g. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.

h. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.

i. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.

j. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.

k. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).

l. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

proposed within the impact area of the project, the Planning Board may require these projects to be incorporated into the analysis.

m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.

n. The base data collected and analyzed during the course of the traffic impact study must be made available upon request of the Planning Board.

o. If a development that requires a traffic impact study is within five hundred (500) feet of York or Eliot, Maine or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;

2. Environmental Analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems, as the Planning Board, upon review and recommendation by the Conservation Commission, may deem necessary;

3. Hydrologic Analysis. When required, an analysis of the effects that the development may have on groundwater must be conducted in accordance with Section 16.8.6.9. This analysis is always required for mobile home park proposals.

4. Wireless Communication Services Facilities (WCSF) Analysis.

a. A visual impact analysis prepared by a landscape architect or other qualified professional acceptable to the Town that quantifies the amount of visual impact on properties located within five hundred (500) feet, within two thousand five hundred (2,500) feet and within two miles of the WCSF. This analysis will include recommendations to mitigate adverse visual impacts on such properties;

b. An analysis prepared by a qualified professional acceptable to the Town that describes why this site and structure is critical to the operation for which it is proposed. The analysis must address, at a minimum: existing and proposed service area; how this WCSF is integrated with other company operations, particularly other structures in Kittery and surrounding communities; future expansion needs in the area; the effect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location;

c. Certification by a structural engineer that construction of the structure satisfies all federal, state and local building code requirements as well as the requirement of maximum permitted co-location at the site as approved by the Planning Board / Town Planner;

d. Payment of all required performance guarantees as a condition of plan approval, with a note on the plan so stating;

e. Payment of the Planning Board application fees;

f. And all other requirements per Section 16.10.

**16.10.5.3 Planning Board Acceptance Review.**

**16.10.5.3.1 Preliminary Plan Acceptance Criteria.**

A. At a Planning Board acceptance review meeting, the Planning Board must accept or deny the preliminary plan application in accordance with the following:

1. Applicant(s) have standing by virtue of vested interest (right, title, or interest) in all properties under consideration in the plan;
2. Application is complete in accordance with the requirements of Section 16.10.5.2 or the Planning Board accepts and approves by formal action any written requests for waiver of submission contents or deferment.
3. At the acceptance review meeting, if the Planning Board accepts the preliminary plan, it must confirm the review category; determine if any studies/review or analysis is required in accordance with Section 16.10.5.2D and schedule the date for a public hearing.

**16.10.5.3.2 Public Hearing Scheduling.** (Ordained 9/24/12; effective 10/25/12)

A. An accepted site plan application must be scheduled for review and public hearing at the next open date on the Planning Board agenda, but no later than thirty (30) days from the date of Board acceptance.

B. In the case of an accepted subdivision plan application, such public hearing must be scheduled no later than thirty (30) days from the date of Planning Board acceptance. With the concurrence of the applicant, this deadline may be modified.

C. For all other development plan applications (i.e. right of way plan application and development in the shoreland overlay zone), at the Planning Board's discretion, a public hearing may or may not be held.

**16.10.5.3.3 Public Notice**

A. The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and not more than fourteen (14) days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least ten (10) days prior to the hearing; and, in the case of a plan located within five hundred (500) feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the Town clerk of Eliot or York, Maine, at least ten (10) days prior to the hearing.

B. A subdivision public notice must be published at least two times in a newspaper of general circulation in the Town. The date of the first notice must be at least seven days before the scheduled public hearing date.

**16.10.5.3.4 Abutter Notice.**

A. The Town Planner must cause written notice of the public hearing to be sent by postage paid, first class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.

B. For a Right of Way Plan application, the Town Planner must cause written notice of the public hearing to be sent by postage paid, first class mail provided by the applicant to all owners that abut the right of way,

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

including those across a public street, and by regular mail to the Code Enforcement Officer, Commissioner of Public Works, Conservation Commission and if applicable the Port Authority, at least seven days prior to the scheduled date. .

C. For a Wireless Communication System Facility (WCSF) Plan application, the Town Planner must cause written notice of the hearing sent by postage paid, first class mail provided by the applicant, at least seven days prior to the hearing, to all owners of abutting property and property located within one thousand (1,000) feet of any property line of the property for which the permit is requested. Notice must also be given to any Town located within one thousand (1,000) feet of the proposed telecommunications facility. The applicant must provide this notification and must present proof of such notification to the Town Planner. The notification must include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

### **16.10.5.4 Planning Board Review Schedule.**

#### **16.10.5.4.1 All Plans.**

A. Within thirty (30) days after acceptance by the Planning Board of a subdivision plan, and within thirty-five (35) days after acceptance by the Planning Board of other applications, the Planning Board must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.

B. Continuation or tabling of a review beyond the thirty (30) day period for subdivision applications, and the thirty-five (35) day period for other applications, must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.

C. Any plan may be continued for a total period not to exceed ninety (90) calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the ninetieth day and action completed in accordance with the requirements and timing contained in this Code whether the applicant has accomplished the purposes for which continued or not.

D. The action to Table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

E. Failure of the Planning Board to act within the thirty (30) day period for an accepted subdivision application, and the thirty-five (35) day period for other Planning Board accepted applications, constitutes disapproval of the plan in which case the applicant may resubmit the plan without payment of an additional application fee.

**16.10.5.4.2 Preliminary Plan Public Hearing.**

- A. The Planning Board may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial, or unduly repetitious.
- B. The chairperson of the Planning Board must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.
- C. Any party may be represented by agent or attorney.
- D. The Town Planner, in consultation with the Code Enforcement Officer, Commissioner of Public Works, and such other Town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.
- E. The Planning Board may continue the hearing to another time and location, including the site of the development, as it deems necessary.

**Article VI. Preliminary Plan Review and Decision**

**16.10.6.1 Planning Board Review and Decision.**

- A. Within six months after approval/classification of a sketch plan by the Board, the applicant must submit an application for approval of a subdivision preliminary plan or site plan preliminary plan in the form prescribed herein.
- B. The Planning Board must approve, approve with conditions or deny the preliminary plan.
- C. Approval of a preliminary plan does not constitute approval of a final plan, but rather it is be deemed an expression of approval of the design submitted on the preliminary plan as a guide to the preparation of the final plan.
- D. Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.
- E. Conditions required by the Planning Board at the preliminary plan review phase must have been met before the final plan may be given final approval unless specifically waived, upon written request by the applicant, by formal Planning Board action wherein the character and extent of such waivers which may have been requested are such that they may be waived without jeopardy to the public health, safety and general welfare.
- F. The decision of the Planning Board plus any conditions imposed must be noted on three copies of the preliminary plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.
- G. If the final plan is not submitted to the Planning Board within six months after classification of the sketch plan, the Planning Board may refuse to act on the subdivision preliminary plan or final site plan and require

resubmission of the sketch plan. All such plans resubmitted must comply with all normal application requirements.

**16.10.6.2 Approved Preliminary Plan Signing.**

A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the chair only, if so voted by the Planning Board.

**Article VII. Final Plan Review and Decision**

**16.10.7.1 Final Plan.**

**16.10.7.1.1 Final Plan Application.**

The applicant must, within six months after approval of a preliminary plan, file with the Planning Board an application for approval of the final plan in the form prescribed herein.

**16.10.7.1.2 Failure to Submit Final Plan Application.**

If the final plan is not submitted to the Planning Board within six months after the approval of the preliminary plan, the Planning Board may refuse to act on the final plan and require resubmission of the preliminary plan. Any plan resubmitted must comply with all application requirements, including payment of fees.

**16.10.7.1.3 Application/Plan Review Expiration.**

A. Uncounted Time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA) any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with Section 16.10.5.4.1C from time of submission to time of decision inclusive, verifiable by recorded documentation, is not counted as part of the cumulative time periods described in this Section.

B. Requests for Extension. The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

**16.10.7.2 Final Plan Application Submittal Content.**

A. A complete final plan application must fulfill all the requirements of a preliminary plan as indicated in Section 16.10.5.2 of this section and must show the following items, unless the Planning Board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission. If no changes occurred to the preliminary plan it also may be considered to be the final plan.

B. Preliminary plan information including vicinity map and any amendments thereto suggested or required by the Planning Board, or other required reviewing agency;

C. Street names and lines, pedestrian ways, lots, easements, and areas to be reserved for or dedicated to public use;

D. Street length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings;

E. Lots and blocks within a subdivision numbered in accordance with local practice;

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

F. Markers/permanent reference monuments: Their location, source references, and where required, constructed in accordance with specifications herein;

G. Structures; their location and description including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures showing building materials and colors, and accesses located within one hundred (100) feet of the property line;

H. Outdoor lighting and signage plan; if the

1. Lighting plan, if the application involves the construction of more than five thousand (5,000) square feet of nonresidential floor area, or the creation of more than twenty thousand (20,000) square feet of impervious area, or the creation of three or more dwelling units in a building; prepared by a qualified lighting professional, showing at least the following at the same scale as the site plan:

- a. All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping, and proposed exterior lighting fixtures;
- b. All proposed lighting fixture specifications and illustrations including photometric data, designation as “cut-off” fixtures, color rendering index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures;
- c. Mounting height of all exterior lighting fixtures;
- d. Lighting analyses and luminance level diagrams or photometric point by point diagrams on a twenty (20) foot grid showing that the proposed installation conforms to the lighting level standards of the ordinance codified in this Section together with statistical summaries documenting the average luminance, maximum luminance, minimum luminance, average to minimum uniformity ratio, and maximum to minimum uniformity ratio for each parking area, drive, canopy, and sales or storage area;
- e. Drawings of all relevant building elevations showing the fixtures, the portions of the walls to be illuminated, the luminance levels of the walls, and the aiming points for any remote light fixtures; and
- f. A narrative that describes the hierarchy of site lighting hierarchy and how the lighting will be used to provides safety, security, and aesthetic effects.

I. Machinery permanently installed locations likely to cause appreciable noise at the lot lines;

J. Materials (raw, finished or waste) storage areas, their types and location; and any stored toxic or hazardous materials, their types and locations;

K. Fences, retaining walls and other artificial features locations and dimensions proposed;

L. Landscaping plan including location, size, and type of plant material;

M. Municipal impact analysis of the relationship of the revenues to the Town from the development and the costs of additional publicly funded resources including;

1. Review for impacts. A list of the construction items that will be completed by the developer prior to the sale of lots.

2. Municipal construction and maintenance items. A list of construction and maintenance items that must be borne by the municipality, which must include, but not be limited to:

- a.. Schools, including busing;
- b. Road maintenance and snow removal;

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- c. Police and fire protection;
- d. Solid waste disposal;
- e. Recreation facilities;
- f. Runoff water disposal drainage ways and/or storm sewer enlargement with sediment traps

3. Municipal costs and revenues. Cost estimates to the Town for the above services and the expected tax revenue of the development.

N. Open Space Land Cession Offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements, or other documents showing the manner in which space(s), Code to which is reserved by the subdivider, are to be maintained.

O. Open Space Land Cession Offers Acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in Section 16.10.7.2O. Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in Section 16.10.7.2O.

P. Performance Guaranty and Town Acceptance to secure completion of all improvements required by the Planning Board and written evidence the Town manager is satisfied with the sufficiency of such guaranty.

1. Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.

2. Process. Prior to the issue of a building permit, the applicant must, in an amount and form acceptable to the Town manager, file with the municipal treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements as specified.

Q. Maintenance Plan and Agreement defining maintenance responsibilities, responsible parties, shared costs, and schedule. Where applicable, a Maintenance Agreement must be included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed.

R. Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer including the location of stormwater and other surface water drainage areas, a Maintenance Plan and Agreement that defines maintenance responsibilities, responsible parties, shared costs, and schedule. Where applicable, a Maintenance Agreement must be included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds.

(Ordained 9/26/11; effective 10/27/11)

S. Phasing Plan. Where, upon applicant's request, the Planning Board may permit phasing of the plans where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.

1. The applicant may file a section of the approved plan with the municipal officials and the York County registry of deeds if said section constitutes at least twenty-five percent (25%) of the total number of lots, or for plans including buildings, twenty-five percent (25%) of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in Section 16.10.9.1.5.

2. Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.
3. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.
4. Portions of both the developed and undeveloped site, impacted by interim infrastructure conditions such as un-looped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead end streets, etc., must be clearly defined and shown on the plans.
5. The Planning Board may permit construction of phases “out of order” only when the storm drainage plan and the water plan, etc. have been reviewed and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

### T. Right-of-Way Plan.

1. A completed application for a Planning Board approved right-of-way must include the requirements of Section 16.10.5.2 with the following modifications:
  - a. The following submission requirements are not necessary for Right-of-Way review: Section 16.10.5.2B.10, parts e, l through k, n and p; and Section 16.10.5.2C.5 through 12.
  - b. Section 16.10.7.2G modified so floor plans and elevations of principal structures are not required;
  - c. Include the size of the parcel minus the area in the ROW, and the street frontage excluding the ROW;
  - d. Only need to show and locate on the plan the names and addresses of all owners of record of contiguous property, including those across a street;
  - e. Include required front yards from the R.O.W. on the plan.

## Article VIII. Planning Board Final Plan Action

### 16.10.8.1 Actions and Decision.

#### 16.10.8.1.1 Actions and Timing.

The Planning Board must act to approve, approve with conditions, disapprove, postpone action or continue a plan, other than a sketch plan, within thirty (30) days of the date of Planning Board acceptance of a subdivision plan application, and within thirty-five (35) days for other development plans. Failure of the Planning Board to act upon the application within such period constitutes disapproval. The applicant may request a continuation for the purpose of introducing additional materials.

**16.10.8.1.2 Continued Plans.**

Any plan may be continued for a total period not to exceed ninety (90) calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the ninetieth day and action completed in accordance with the requirements and timing contained in this Code whether the applicant has accomplished the purposes for which continued or not.

**16.10.8.1.3 Plans Tabled.**

The action to Table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

**16.10.8.2 Planning Board Review and Decision – Final Plan Conditions of Approval.**

**16.10.8.2.1 Conditions – General.**

Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and , the amount of all guarantees which may be required.

**16.10.8.2.2 Performance Guaranty Conditions.**

Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement. The applicant must file with the Town, as a condition for approval of the final plan, a performance guaranty in a form acceptable to the Town manager.

1. The amount must be at least equal to the total cost of furnishing, installing, connecting and completing all street grading, paving, storm drainage and utilities and other improvements specified in the development master plan and shown on the final plan, and must guarantee the satisfactory coordination with other related phases of development and satisfactory completion of all specified improvements.
2. Where the Planning Board reviews and approves project phasing, the Board may also require the developer to provide performance assurances directly related to a particular phase or phases of the project where it can be demonstrated that the uncompleted portions thereof do not detrimentally affect the completed development or the current and ongoing development.
3. No phase of construction may commence until the required performance assurances have been met.
4. Performance guarantees must be based on professionally prepared cost estimates for all approved infrastructure improvements, and include an inspection escrow agreement for site inspection equal to two percent of construction costs.

(Ordained 9/26/11; effective 10/27/11)

**16.10.8.2.3 Process.**

A. Before the Planning Board grants approval of a final plan, the applicant must, in an amount and form acceptable to the Town manager, file with the municipal treasurer an instrument to cover the full cost of the required improvements.

B. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed.

C. The performance guaranty must include an amount required for recreation land or improvements as specified.

**16.10.8.2.4 Condition Compliance.**

The Planning Board must instruct the Code Enforcement Officer not to issue an occupancy permit until all conditions of the agreement have been satisfied.

**16.10.8.2.5 Conditions or Waivers.**

Conditions required by the Planning Board at the final plan review phase must have been met before the final plan may be given final approval unless so specified in the condition or specifically waived, upon written request by the applicant, by formal Planning Board action wherein the character and extent of such waivers which may have been requested are such that they may be waived without jeopardy to the public health, safety and general welfare.

**16.10.8.2.6 Conditions on Plan.**

The decision of the Planning Board plus any conditions must be noted on three copies of the final plan to be recorded at the York County Registry of Deeds, when required. One copy must be returned to the applicant, one retained by the Town Planner and one forwarded to the Code Enforcement Officer.

**16.10.8.2.7 Flood Avoidance Condition.**

If a structure is located within a flood area, the proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation;

**16.10.8.2.8 Phasing Plan Condition.**

The Planning Board may permit phasing of a plan where it can be demonstrated to the Planning Board's satisfaction such phasing would result in a safe and orderly implementation of the Plan.

A. Phasing is subject to any conditions deemed necessary to assure that a reasonable mixture of uses is completed within each separate phase of the plan.

B. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.

C. The Planning Board may permit construction of phases "out of order" only when the storm drainage plan and the water plan, etc. have been reviewed and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

**16.10.8.3 Final Plan Approval.**

**16.10.8.3.1 Official Approval.**

After considering all submissions, evidence and testimony in accordance with the requirements of all applicable state and the Town code, the Planning Board must make a finding of facts for each and every proposed phase of development, including the development master plan and each subsequent development plan, and take formal action as required in this Code.

**16.10.8.3.2 Agreement Form.**

An approval by the Planning Board must take the form of an agreement between the Town and the applicant, incorporating as elements the application, the Planning Board's findings of fact, and such conditions as the Planning Board may impose upon approval.

**16.10.8.3.3 Agreement Distribution.**

The Planning Board must send copies of the agreement to the Town Manager and Code Enforcement Officer.

**16.10.8.3.4 Findings of Fact.**

Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this Code, and which certify the development meets the following requirements:

**A. Development Conforms to Local Ordinances.**

The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

**B. Freshwater Wetlands Identified.**

All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

**C. River, Stream or Brook Identified.**

Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.

**D. Water Supply Sufficient.**

The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

**E. Municipal Water Supply Available.**

The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

**F. Sewage Disposal Adequate.**

The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

**G. Municipal Solid Waste Disposal Available.**

The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.

**H. Water Body Quality and Shoreline Protected.**

Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

**I. Groundwater Protected.**

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

### J. Flood Areas Identified and Development Conditioned.

All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.

### K. Stormwater Managed.

The proposed development will provide for adequate stormwater management.

### L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

### M. Traffic Managed.

The proposed development will:

1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and
2. Provide adequate traffic circulation, both on-site and off-site.

### N. Water and Air Pollution Minimized.

The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

1. Elevation of the land above sea level and its relation to the floodplains;
2. Nature of soils and sub-soils and their ability to adequately support waste disposal;
3. Slope of the land and its effect on effluents;
4. Availability of streams for disposal of effluents;
5. Applicable state and local health and water resource rules and regulations; and
6. Safe transportation, disposal and storage of hazardous materials.

### O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

### P. Developer Financially and Technically Capable.

Developer is financially and technically capable to meet the standards of this section.

### Q. For Wireless Communication System Facility (WCSF).

In development, the WCSF:

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1. Tower or other structure height does not exceed that which is essential for its intended use and public safety;
2. Proximity of tower to residential development or zones is acceptable;
3. Nature of uses on adjacent and nearby properties is compatible;
4. Surrounding topography is protected;
5. Surrounding tree coverage and foliage is protected;
6. Design of the tower, antenna, or facility with particular reference to design characteristics effectively eliminating or significantly reducing visual obtrusiveness is minimized;
7. Proposed ingress and egress to the site is adequate;
8. Co-location with another existing WCSF has been thoroughly pursued and is not feasible;
9. Visual impacts on view sheds, ridgelines, and other impacts caused by tower location, tree and foliage clearing and placement of structures, and associated development is minimized;
10. Will not unreasonably interfere with the view of or from any public park, natural scenic vista, and historic building or major view corridor and the Kittery waterfront and harbor;
11. is not constructed in such a manner as to result in needless height, mass, and guy-wire supports, with documentation having been provided and reviewed regarding the design capacity and/or the remaining co-location capacity of the tower/facility;
12. "Stealth" technology has been pursued and is not a viable option.

R. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay Zones.

The proposed use will:

1. Maintain safe and healthful conditions;
2. Not result in water pollution, erosion or sedimentation to surface waters;
3. Adequately provide for the disposal of all wastewater;
4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Not serve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Protect archaeological and historic resources as designated in the comprehensive plan;
7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;
8. Avoid problems associated with floodplain development and use; and
9. Is in conformance with the provisions of this Code.

S. For a Right of Way Plan.

The proposed ROW:

1. Does not create any nonconforming lots or buildings; and
2. Could reasonably permit the right of passage for an automobile.

T. For Special Exception Use – Special Exception Use Permitted. (Ordained 9/26/11; effective 10/27/11)

If a special exception use is requested, the special exception use will:

1. not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones; and,
3. not adversely affect safety, the health, and the welfare of the Town.
4. Use will be in harmony with and promote the general purposes and intent of this Code.

#### **16.10.8.4 Final Plan Signing and Recording.**

##### **16.10.8.4.1 Final Approved Master Site Development Plan Signing.**

A master site development plan and each subsequent development plan thereof has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the chair only, if so voted by the Planning Board.

##### **16.10.8.4.2 Approved Final Plan Signing.**

A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the chair only, if so voted by the Planning Board.

##### **16.10.8.4.3 Approved Final Plan Recording.**

An approved plan involving the division of land, easements, or property boundary modification must be recorded by the York County Registry of Deeds. A mylar copy of the recorded plan must be returned to the Town Planner.

(Ordained 9/26/11; effective 10/27/11)

### **Article IX. Post Approval**

#### **16.10.9.1 Post Approval Actions Required.**

##### **16.10.9.1.1 Approved Final Subdivision Plan.**

A. An approved subdivision plan must be filed with the York County Registry of Deeds within ninety (90) days from date of such approval. Any plan not so filed and recorded is null and void, unless particular circumstances dictate and upon petition, the Planning Board grants an extension which may not exceed two additional ninety (90) day periods.

B. Where applicable, the Stormwater and Erosion Control Maintenance Agreement that must be included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed must be recorded with the York County Registry of Deeds.

##### **16.10.9.1.2 Plan Revisions after Approval.**

No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan, unless in accordance with the Planner's and CEO's powers and duties as found in Chapter 16.4, or unless the plan has been resubmitted and the Planning Board specifically approves such modifications. In the event a final plan is recorded without complying with this requirement, the same is null and void, and the Planning Board must institute proceedings to have the plan stricken from Town records and the York County Registry of Deeds.

##### **16.10.9.1.3 Approval Not Acceptance of Property.**

The approval by the Planning Board of a plan, a master site development plan or any other subsequent development plan does not constitute, nor is it evidence of any acceptance by the municipality of any street, easement, or other open space shown on the plan. When a park, playground, or other recreation area is shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas. The Planning Board must require the plan to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the municipal officials

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

covering future deed and Code, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such recreation area.

### **16.10.9.1.4 Approved Plan Expiration.**

A. A subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one year or is not substantially complete within three years from the date of Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed ten (10) years.

B. A non-subdivision plan's approval by the Planning Board will expire if work on the development is not commenced within one year or substantially complete within two years from the date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.

### **16.10.9.1.5 Requests for Extension.**

The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

### **16.10.9.2 Field Changes.** (Ordained 9/24/12; effective 10/25/12)

A. Minor. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the Code Enforcement Officer and Town Planner are authorized to approve minor plan amendments due to unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town Planner must issue any approval under this subsection in writing and transmit a copy of the approval to the Planning Board. The developer must provide the revised plan to the Town Planner and be recorded in the York County Register of Deeds when applicable.

B. Major. If at any time during the construction of the required improvements, it appears necessary or desirable to modify the required improvements, major plan changes due to unforeseen field circumstances, such as relocations of rights-of-way, property boundaries, changes of grade by more than one percent, or other modifications requiring Planning Board review per section 16.10.3.2, must be reviewed by the Planning Board.

### **16.10.9.3 Modifications to an Approved Plan.**

#### **16.10.9.3.1 Minor Modifications.**

Modifications to a Planning Board approved plan, that do not require Planning Board review per Section 16.10.3.2, may be approved by the Code Enforcement Officer and Town Planner. Such approvals must be issued in writing to the developer with a copy to the Planning Board. The developer must provide the revised plan to the Town Planner and be recorded in the York County Register of Deeds when applicable.

#### **16.10.9.3.2 Major Modifications.**

Major modifications (e.g., relocations of principal structures, rights-of-way, or property boundaries; changes of grade by more than one percent) require Planning Board approval.



## **Article X. Shoreland Development Review**

### **16.10.10.1 General.**

#### **16.10.10.1.1 Permits Required.**

A. After the effective date of this code, no person may, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the shoreland or resource protection overlay zones in which such activity or use would occur, or expand, change or replace an existing use or structure, or renew a discontinued nonconforming use.

B. When replacing an existing culvert, the watercourse must be protected so that the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.

C. A permit is not required for the replacement of an existing road culvert provided the replacement culvert is not:

1. More than one standard culvert size larger in diameter than the culvert being replaced,
2. More than twenty-five (25) percent longer than the culvert being replaced, and
3. Longer than seventy-five (75) feet.

D. A permit is not required for an archaeological excavation provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

E. Any permit required by this Section is in addition to any other permit required by other law or ordinance.

#### **16.10.10.1.2 Permit Application.**

A. Every applicant for a permit must complete and submit a Kittery application form and a site plan drawn to scale, to the appropriate official as indicated in Section 16.10.5.2B.

B. All applications must be signed by the owner, owners or lessee of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person must submit a letter of authorization from the owner or lessee.

C. All applications must be dated, and the Code Enforcement Officer, Town Planner, Town Clerk or Kittery Port Authority, as appropriate, must note upon each application the date and time of its receipt by each.

D. Whenever the nature of the proposed structure requires the installation of a subsurface sewage disposal system, a completed application for a subsurface wastewater disposal permit must be submitted. The application must include a site evaluation approved by the Plumbing Inspector.

**16.10.10.2 Procedure for Administering Permits.**

Within thirty five (35) days of the receipt of a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 16.10.5.2B, must notify the applicant in writing that the application is or is not complete. If the application is incomplete, the written notification must specify the additional material required to complete the application.

A. The Code Enforcement Officer is required to approve, approve with conditions or deny all permit applications in writing within thirty-five (35) days of receiving a completed application.

B. If the Planning Board has a waiting list of applications, a decision on the application will occur within thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, if one is held.

C. Permits will be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this section.

The applicant is required to demonstrate, to the satisfaction of the reviewing authority, that the proposed land use activity is in conformance with the purposes and provisions of this Code.

D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated that the proposed use will:

1. maintain safe and healthful conditions;
2. not result in water pollution, erosion or sedimentation to surface waters;
3. adequately provide for the disposal of all wastewater;
4. not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. protect archaeological and historic resources;
7. not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;
8. avoid problems associated with floodplain development and use
9. is in conformance with the provisions of this Code; and
10. recorded with the York County Registry of Deeds.

**Chapter 16.11 MARINE-RELATED DEVELOPMENT** (Ordained 1/27/14; Effective 2/27/14)

**16.11.1 Authority and Scope.**

- A. Port Authority approval extends from the navigable tidal waters to the mean high water line or upland edge of a coastal wetland.
- B. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width.
- C. Only one pier, ramp and float structure is permitted on any noncommercial or non-industrial lot.
- D. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, or other structure beyond the normal high-water line.
- E. All other structures upland of, and abutting or built on or over a structure extending into a water body beyond the mean high water line or the edge of a coastal wetland require Planning Board approval.
- F. Where the Planning Board must review and approve a development plan involving a pier, ramp, flotation system or principal marine structure, and prior to Planning Board approval, the Port Authority must comment on the plan's conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure.
- G. The Kittery Port Authority (KPA) through its established *Rules and Regulations* reviews and approves applications for piers, wharves, landings, floats, bridges, and other water-dependent structures or uses. Applications are available online and at the Town Offices and are submitted to the Planning and Development Department with the required copies and application fee. Applications that contain upland development within 100 feet of the upland edge of a coastal or freshwater wetland, must be submitted as a separate application for Planning Board review and approval and include all information required in 16.11.2 below.
- H. KPA applications must be reviewed by the Town Planner and Code Enforcement Officer prior to the KPA Chairperson reviewing for completeness and placement on the Port Authority's agenda.

**16.11.2 Application.**

- A. Shorefront development applications for marine-related use must include the following:
  - 1. Aerial photographs (images available in the public domain) and vicinity maps and plans showing the property in relation to surrounding properties, and the location of the lots that would have use of the pier, ramp and float system. Maps and plans to include:
    - a. Construction plans for piers, ramps and floats;
    - b. Areas of vegetation clearing;
    - c. Location of required parking space(s); and
    - d. Location of boat and/or float storage.
  - 2. Rights granted for access to the pier, ramp and float system or to any water-dependent structure; public and private access paths;

## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

3. Documentation addressing visual impact and controls to assure continuing conformance to the shorefront development plan and this Code;
4. The applicant must show at submittal that all necessary applications for permits, leases, approvals, and any supporting documentation as may be required have been filed, including the following:
  - a. Department of Environmental Protection permit application pursuant to the Natural Resources Protection Act, 38 M.R.S. §480C;
  - b. Army Corps of Engineers permit application;
  - c. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator application; and
  - d. Building permit application.
5. Any other details requested by the Planning Board or Port Authority.

### **16.11.3 Shorefront Development Plan Review.**

- A. All applications containing upland development require Planning Board review, excluding development as described in Title 16.11.1.B.
- B. If Planning Board review is not required, the Town Planner in consultation with the Code Enforcement Officer will review the application for land use compliance with this Code, and forward a written record of findings to the Planning Board and Port Authority, and forward the application to the Port Authority for processing.
- C. The Town Planner must transmit copies of Planning Board decisions and the Code Enforcement Officer must transmit copies of Board of Appeals decisions and all documentation constituting the record of the decision for marine-related development to the Port Authority.
- D. The Port Authority will notify the applicant and the Code Enforcement Officer in writing of the granting of, or denial of, the applicant's request.
- E. All required local approvals (excluding Town building permits), federal and state approvals and/or permits must be received in the Planning Office prior to the issuance of a building permit by the Code Enforcement Officer.
- F. Prior to the commencement of construction on any pier, dock, wharf, marina or any other proposed use that projects into a water body, the owner and/or developer must apply for, and obtain a building permit from the Code Enforcement Officer.